



# 2016 SPECIAL CONVENTION OF THE EPISCOPAL DIOCESE OF CALIFORNIA

## Day of Convention Booklet

*This document contains important documents for the Special Convention of the Episcopal Diocese of California.*

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# Notes

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# SPECIAL CONVENTION

**SATURDAY, JUNE 11**

- 9:30 a.m. – 10:30 a.m. Registration (**Near the Font**)
- 10:30 Call to Order and Bishop's Welcome (**Gresham Hall**)
- 10:35 Liturgy
- 10:40 Report of the Committee on Credentials; adoption of Special Order
- 10:45 Report of the Committee on Canons; action on Proposed Amendments to Canon XVII
- 11:00 Action on Proposed Resolution on Institutions
- 11:05 Announcements and adjournment
- 11:15 Ministry presentations
- Social justice (**Wilsey C**)
  - Greening the Church (**Wilsey A**)
  - Essential housing (**Wilsey B**)
- 12:00 Lunch (**Cathedral Plaza**)



# Proposed Amendments to Canon XVII

## Diocesan Institutions

### Canons 17.02

*Resolved*, that Canon XVII, Sections 17.02, 17.03, 17.04, 17.06, 17.08, and 17.10 of the Canons of the Diocese of California be amended as follows (deletions in **bold strikethrough text**, insertions in **bold italic text**):

#### Sec. 17.02. Purposes.

*The Convention may recognize an ~~An~~ entity formed for any *religious*, charitable, or educational purpose ~~may be recognized~~ as a Diocesan Institution.*

#### Sec. 17.03. Qualification.

*The Convention may recognize a ~~A~~ group or entity ~~may be recognized~~ as a Diocesan Institution ~~by Convention~~ if the Bishop and Standing Committee have first recommended such action and the Chancellor has certified that its articles of incorporation and bylaws meet the requirements of this Canon.*

#### Sec. 17.04. Corporate Requirements.

Each Diocesan Institution shall be a corporation in good standing under the Nonprofit Corporation Law of California. Except as otherwise provided **herein in this Canon XVII**, the articles of incorporation or bylaws of each Diocesan Institution shall provide that:

- (a) The Bishop, or some other person appointed by the Bishop, shall be a member of the governing board;
- (b) At least a majority of the members of the governing board shall be Clerics Canonically Resident in the Diocese or persons eligible, under Article VI, Section 6.4, of the Constitution of the Diocese, for election as Delegates to the Convention;
- (c) *No person shall be elected or appointed to the governing board without the prior written consent of the Bishop and the Standing Committee; and*
- (d) *No amendment to the articles of incorporation or bylaws shall take effect without the prior written consent of the Bishop and the Standing Committee.*

#### Sec. 17.06. Reports.

*Within ten (10) days after any Diocesan Institution files a Form 990 information return with the Internal Revenue Service or a registration or registration renewal with the California Attorney General's Registry of Charitable Trusts, it must submit a copy to the Bishop and the Standing Committee. Whenever the California Nonprofit Corporation Law requires a Diocesan Institution to request the California Attorney General's consent the Diocesan Institution must, not later than ten (10) days before doing so, submit a copy of that request to the Bishop and the*



# Proposed Amendments to Canon XVII

*Standing Committee. Within ten days after any Diocesan Institution amends its articles of incorporation or bylaws, it must submit a copy to the Bishop and the Standing Committee.* The Bishop or Standing Committee may require annual or special reports from any Diocesan Institution regarding the composition of its Board ~~and~~ or its business and affairs to insure congruence between the mission and interests of the Diocese and the Diocesan Institution.

## **Sec. 17.08. List of Institutions.**

The Secretary of Convention shall ~~certify~~ *report* the names of all Diocesan Institutions in the Journal of Convention.

## **Sec. 17.10. Exceptions.**

This Canon XVII shall not apply to organizations authorized by religious communities, to organizations chartered by the Diocesan Corporation, or to a parish, a mission, the Cathedral, The Episcopal Church, or the Eighth Province of The Episcopal Church. *Unless another canon expressly provides otherwise, the* ~~The~~ only *Diocesan* canons applicable to Diocesan Institutions are found in this Canon XVII.



# Report of the Committee on Canons

## Report of the Committee on Canons to the Special Convention of the Diocese of California

### Explanation

The proposed amendments to Canon XVII were recommended initially by the Chancellor.

The purposes of the amendments are to

- Clarify that it is the Convention itself which determines for all purposes which institutions are and are not “Diocesan Institutions”; and not any particular officer of the Convention or of the Diocese
- Confirm the authority of the Bishop and the Standing Committee over the Diocesan Institutions, particularly with respect to the composition of their governing bodies and changes in their charter documents; and
- Enhance the timely flow of information to the Diocese concerning significant transactions involving, and changes in the charitable purposes of, any Diocesan Institution.

During its review of the proposed changes to Canon XVII, the Committee on Canons has, as authorized by Canon 21.03, made certain amendments to the proposal initially submitted by the Chancellor. These changes are believed to clarify the revised Canons and to enhance the timely flow of information to the Diocese regarding changes affecting Diocesan Institutions.

The Chancellor has approved all of the Committee’s suggested changes.

The Committee on Canons finds the proposed amendments to Canon XVII suitable in form and content, and recommends them to the Convention for adoption.



# Proposed Special Order

## Special Order Committee on Canons

**The Committee on Dispatch of Business moves that the consideration of the Report of the Committee on Canons be governed by the follow Special Order:**

1. Five minutes shall be provided for presentation of the Report and questions of clarification.
2. Ten minutes shall be allotted for debate on any amendments to the Constitution and Canons.
3. Within the times allowed, two minutes shall be allotted to present an amendment, and five minutes allotted for debate on each amendment, during which time no speaker shall be allowed more than two minutes.
4. The House, by 2/3 majority, may vote to extend the time for debate. No motion to lay on the table, to recommit, or otherwise to terminate debate shall be in order while anyone still wishes to speak. At the conclusion of each established time period, votes shall be taken on all pending motions.



# Report of the Committee on Governance

**The Committee on Governance, working under the direction of the Standing Committee of the Diocese of California, issues the following statement. The Standing Committee concurs with the Committee on Governance's endorsement of the proposed changes to Diocesan Canon XVII and is in full support of this amendment.**

— **The Rev. Lori Walton, President, Standing Committee**

The Committee on Governance has reviewed and concurs with the proposed changes to Canon XVII as the changes strengthen the relationship between the Diocese and its Institutions. The committee agrees that the restoration of the consent of the Bishop and the Standing Committee to the election of all directors of Diocesan Institutions would better serve the Diocese by providing a formal process to review prospective directors' qualifications (including the canonically required affiliation with the Episcopal Church) as well as their commitment to maintaining each Institution as a ministry of the Diocese. The Committee on Governance also agrees that the articles and by-laws of an Institution should not be amended without the written consent of the Standing Committee and that any reporting to the State of California by an Institution should be shared in a timely manner with the Diocese.

— The Rev. Jill Honodel+, Chair of the Committee on Governance



# Submitted Resolution from the Committee on Canons

## **An Act Declaring and Certifying the Continued Recognition of Episcopal Senior Communities and Senior Resources of the West as Diocesan Institutions**

In the Convention of The Episcopal Church in the Diocese of California, assembled on June 11, 2016, at Grace Cathedral in San Francisco, it is hereby

*Resolved*, That under Canon 17.03, this Convention has the exclusive power to recognize Diocesan Institutions;

*Resolved*, That under Canon 17.07, this Convention also has the exclusive power to revoke the status of any Diocesan Institution;

*Resolved*, That under these Canons, no Diocesan Institution has the right or power to alter its status as such without the consent of this Convention, as expressed in a formal Act of the Convention;

*Resolved*, That Canon I.17.8 of the Canons of The Episcopal Church provides, “Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised,” which applies to every director of a Diocesan Institution as an office created under the authority of this Diocese;

*Resolved*, That this Diocese and its Bishop organized, chartered, and funded John Tennant Memorial Homes, Inc., later known as JTM Communities and now known as Senior Resources of the West, as a Diocesan Institution;

*Resolved*, That on February 5, 1964, the 114th Annual Convention approved John Tennant Memorial Homes, Inc. as a Diocesan Institution of this Diocese, directing that its name be reported in the Journal of the Convention as such;

*Resolved*, That the 115th, 116th, 117th, 118th, 119th, 120th, 121st, and 122nd Annual Conventions of this Diocese approved the continued recognition of John Tennant Memorial Homes, Inc., as a Diocesan Institution of this Diocese, and no subsequent Convention has ever altered or revoked its status as a Diocesan Institution;

*Resolved*, That this Diocese and its Bishop also organized, chartered, and funded Episcopal Homes Foundation, now known as Episcopal Senior Communities, as a Diocesan Institution;

*Resolved*, That on February 5, 1966, the 116th Annual Convention approved Episcopal Homes Foundation as a Diocesan Institution of this Diocese, directing that its name be reported in the Journal of the Convention as such;

*Resolved*, That the 117th, 118th, 119th, 120th, 121st, 122nd, and 133rd Annual Conventions of this Diocese approved the continued recognition of Episcopal Senior Communities as a Diocesan Institution of this Diocese, and no subsequent Convention has ever altered or revoked its status as a Diocesan Institution;

*Resolved*, That this Convention hereby declares and certifies that Episcopal Senior Communities, formerly known as Episcopal Homes Foundation, has been since February 5, 1966 and remains a Diocesan Institution under the authority of this Convention;



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*Resolved*, That this Convention hereby declares and certifies that Senior Resources of the West, formerly known as JTM Communities and as John Tennant Memorial Homes, Inc., has been since February 5, 1964 and remains a Diocesan Institution under the authority of this Convention;

*Resolved*, That this Convention directs the Secretary to correct any and all Journals and other records of this Convention to conform to this declaration and certification;

*Resolved*, That this Convention declares that any and all actions taken at any time by Episcopal Senior Communities and Senior Resources of the West in derogation of their status as Diocesan Institutions are null, void, and of no force or effect whatsoever; and

*Resolved*, that this Convention declares each of the above matters as its conclusive ecclesiastical judgment under the Constitution and Canons of The Episcopal Church in the Diocese of California.

## ***Explanation***

This resolution asserts the authority of the Convention, as the highest governing body of The Episcopal Church in the Diocese of California, to determine the status of two Diocesan Institutions that are unlawfully seeking to abrogate that status: Episcopal Senior Communities and Senior Resources of the West.

The Episcopal Diocese of California began its ministry of housing and related services to seniors in 1869 by establishing the Protestant Episcopal Old Ladies Home in San Francisco, followed in 1896 by the John Tennant Memorial Home in Pacific Grove.

In the 1960s, under the leadership of the Rt. Rev. James A. Pike, Fifth Bishop of California, and the Ven. Darby Wood Betts, Archdeacon of California, the Diocese reorganized these ministries into two new Diocesan Institutions:

- In 1963, Bishop Pike, Archdeacon Betts, and other clergy and lay leaders of this Diocese incorporated John Tennant Memorial Homes, Inc., providing in its bylaws that it is “organized to operate as a Diocesan Institution of The Protestant Episcopal Church in the Diocese of California. So long as it is accepted and certified by Convention of said Diocese as such, it will function as such and, to the extent permissible under the laws of the State, observe and conform to all provisions of the Constitution and Canons of The Protestant Episcopal Church in the United States of America and in said Diocese.”<sup>1</sup>

- In 1965, Bishop Pike, Archdeacon Betts, and other clergy and lay leaders of this Diocese incorporated Episcopal Homes Foundation, providing in its articles of incorporation that it was

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<sup>1</sup> Journal of the 114th Annual Convention, Feb. 4–5, 1964, p. 117; Journal of the 115th Annual Convention, Feb. 1–2, 1965, p. 87; Journal of the 116th Annual Convention, Feb. 4–5, 1966, pp. 102–103; Journal of the 117th Annual Convention, Feb. 3–4, 1967, p. 94; Journal of the 118th Annual Convention, Feb. 3–4, 1968, p. 92; Journal of the 119th Annual Convention, Jan. 31–Feb. 2, 1969, p. 72; Journal of the 120th Annual Convention, Oct. 24, 1969, pp. 7–8, 20–21; Journal of the 121st Annual Convention, Nov. 6, 1970, p. 18; Journal of the 122nd Annual Convention, Oct. 22, 1971, pp. 7–8; Articles of Incorporation of John Tennant Memorial Homes, Inc., Aug. 2, 1963; By-Laws of John Tennant Memorial Homes, Inc., May 25, 1965; Registration of Charitable Trust of John Tennant Memorial Homes, Inc., Apr. 28, 1964.



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formed “to provide housing, related facilities, and services for elderly persons on a non-profit, religious, and charitable basis; and to receive donations, gifts, and other funds for use in the advancement of the religious and charitable work done on a non-profit basis by the Protestant Episcopal Church in the Diocese of California, its Diocesan Institutions, and the parishes and missions affiliated with it.” The articles of incorporation provided further that its property was “irrevocably dedicated to religious and charitable purposes,” so that if it was ever liquidated or dissolved its remaining assets would be distributed “to a fund, foundation or corporation organized and operated exclusively for charitable purposes by the Diocese of California of the Protestant Episcopal Church.” The bylaws provided further that it “will function as a diocesan institution of the Diocese of California and, to the extent permissible under the laws of the state, will observe and conform to all provisions of the Constitution and Canons of the Protestant Episcopal Church in the United States of America and in the Diocese of California not inconsistent with the interest of the Corporation.”<sup>2</sup>

In the early 1970s, John Tennant Memorial Homes, Inc. conveyed most but not all of its assets to Episcopal Homes Foundation. Nevertheless, the leaders of Episcopal Homes Foundation continued to maintain JTMH as a Diocesan Institution. JTMH also continued to maintain its charitable status with the IRS and the Attorney General of California based on its continued existence as a Diocesan Institution.

Episcopal Homes Foundation ultimately came to operate Canterbury Woods (Pacific Grove), St. Paul’s Towers (Oakland), Spring Lake Village (Santa Rosa), Presidio Gate Apartments (San Francisco), and San Francisco Towers, among other facilities. For many years, it did so under the leadership of Archdeacon the Ven. Darby Wood Betts, and his successor, the Rev. Dr. John Fitterer, both priests of this Diocese who never wavered in their commitment to operating Episcopal Homes Foundation as a Diocesan Institution.

During 2003 to 2005, a dispute arose between the Diocese and Episcopal Homes Foundation about a proposed merger with Northern California Presbyterian Homes & Services, Inc., on terms that would have undermined EHF’s status as a Diocesan Institution. That dispute was resolved on May 1, 2005, when The Episcopal Diocese of California and The Episcopal Bishop of California entered into a Sponsorship Agreement with Episcopal Homes Foundation in which it agreed to maintain the Bishop’s rights and prerogatives to participate in its governance on a perpetual basis, including appointing at least one director to its board, maintaining an Episcopalian majority on its board, and designating a charity organized and operated by the Diocese to receive the assets of Episcopal Homes Foundation if it ever dissolves. Under the

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<sup>2</sup> Journal of the 114th Annual Convention, Feb. 4–5, 1964, p. 117; Journal of the 115th Annual Convention, Feb. 1–2, 1965, p. 87; Journal of the 116th Annual Convention, Feb. 4–5, 1966, pp. 102–103; Journal of the 117th Annual Convention, Feb. 3–4, 1967, p. 94; Journal of the 118th Annual Convention, Feb. 3–4, 1968, p. 92; Journal of the 119th Annual Convention, Jan. 31–Feb. 2, 1969, p. 72; Journal of the 120th Annual Convention, Oct. 24, 1969, pp. 7–8, 20–21; Journal of the 121st Annual Convention, Nov. 6, 1970, p. 18; Journal of the 122nd Annual Convention, Oct. 22, 1971, pp. 7–8; Journal of the 133rd Annual Convention, Oct. 22–23, 1982, pp. 22–23; Articles of Incorporation of Episcopal Homes Foundation, Nov. 24, 1965; By-Laws of Episcopal Homes Foundation, Nov. 4, 1965; Registration of Charitable Trust of Episcopal Homes Foundation, Jan. 13, 1966.



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Sponsorship Agreement, an affiliation is permissible so long as Episcopal Senior Communities honors these and other rights and prerogatives essential to its status as a Diocesan Institution.

A major new dispute has now arisen about the status of Episcopal Senior Communities and Senior Resources of the West as Diocesan Institutions:

- On April 30, 2007, John Tennant Memorial Homes, Inc. changed its name to JTM Communities and removed all reference to its status as a Diocesan Institution from its corporate articles and bylaws without notice to the Bishop, the Standing Committee, or the Diocese, in direct violation of its original bylaws requiring the written consent of the Bishop and the Standing Committee for any such change, and in direct violation of Canon 17.07 requiring the consent of this Convention for any such change.<sup>3</sup>

- On July 31, 2007, the corporate secretary of Episcopal Homes Foundation and JTM Communities certified under penalty of perjury to the Attorney General of California that both corporations always had been organized and operated as Diocesan Institutions of the Episcopal Diocese of California, without disclosing to the Attorney General that JTM Communities failed to obtain the written consent of the Bishop, the Standing Committee, or this Convention for the unauthorized actions taken on April 30, 2007.<sup>4</sup>

- On February 13, 2014, Episcopal Senior Communities amended its bylaws to provide that it would remain a Diocesan Institution only so long as it so “chooses,” in violation of Canon XVII, which vests the exclusive power to alter its status as a Diocesan Institution in this Convention.

These actions remained unknown to the Diocese until December 2014, when Episcopal Senior Communities announced a new agreement to affiliate and ultimately merge with Northern California Presbyterian Homes & Services. As part of that agreement, Episcopal Senior Communities informed the Diocese that it intended to abrogate its status as a Diocesan Institution and sever all governance ties to the Diocese.

The Diocese objected to these actions as a breach of the Sponsorship Agreement and a violation of the Canons. The Bishop, the Chancellor of the Diocese, and members of the Standing and the Executive Council negotiated for months to resolve this dispute. Those negotiations proved futile when the leadership of Episcopal Senior Communities and Senior Resources of the West took the following actions:

- On June 23, 2015, the board of directors of JTM Communities voted to remove the Bishop’s Representative from the board and to sever all other ties to the Diocese and the Bishop, in violation of Canon XVII. (At the same time, it renamed itself Senior Resources of the West.)<sup>5</sup>

- On June 25, 2015, the board of directors of Episcopal Senior Communities voted to remove the Bishop’s Representative and the Episcopalian majority from the board and to sever all other

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<sup>3</sup> Amended and Restated Bylaws of JTM Communities, Apr. 30, 2007; Certificate of Amendment and Restatement of Articles of Incorporation of John Tennant Memorial Homes, Inc., June 6, 2007.

<sup>4</sup> Declaration of Dee Ann Campbell, Secretary, Episcopal Homes Foundation and JTM Communities, to the Attorney General of California, July 31, 2007.

<sup>5</sup> Minutes to JTM Board of Directors’ Meeting, June 23, 2015.



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ties to the Diocese and the Bishop, in violation of Canon XVII and in breach of the Sponsorship Agreement.<sup>6</sup>

The Diocese and the Bishop filed a Complaint in the San Francisco Superior Court against Episcopal Senior Communities and Senior Resources of the West seeking to enjoin all actions they had taken in derogation of their status as Diocesan Institutions. Episcopal Senior Communities and Senior Resources of the West countersued the Diocese and the Bishop in an effort to permanently abrogate their status as Diocesan Institutions and their obligations to the Diocese.<sup>7</sup>

The litigation is ongoing. The California Court of Appeal has ordered that Episcopal Senior Communities and Senior Resources of the West take no action to remove the Bishop's Representative from their boards of directors or the Episcopalian majority from the Episcopal Senior Communities board of directors,<sup>8</sup> which ensures that even in the current strained circumstances, they continue to be Diocesan Institutions.

Nevertheless, in letters to the Bishop on June 9, 2016, Episcopal Senior Communities and Senior Resources of the West once again disavowed their status as Diocesan institutions. Adoption of this resolution is necessary to reassert the exclusive right of this Convention to determine the continued status of Episcopal Senior Communities and Senior Resources of the West as Diocesan Institutions.

The Diocese holds endowment funds exceeding \$1 million originally donated to support the Protestant Episcopal Old Ladies Home and the John Tennant Memorial Home, the earnings of which the Diocese has paid for decades to Episcopal Senior Communities to support its ongoing ministry as a Diocesan Institution. The Diocese has continued to pay these earnings unabated despite the ongoing litigation.

The Bishop, the Chancellor, and the Secretary of the Convention have each reviewed the Journals of the Convention to confirm the contents of this resolution. The Chancellor has also reviewed other relevant documents. All source material is noted in the footnotes to this Explanation. The resolution is necessary to direct the Secretary to make the appropriate corrections to the Journal so that it conforms to the Acts adopted by this Convention and the continued status of Episcopal Senior Communities and Senior Resources of the West as Diocesan Institutions under the canon law of The Episcopal Church in the Diocese of California.

## ***Report of the Committee on Canons***

As provided in Rule 3.3 of the Rules of Order and at the request of the Bishop and the Chancellor of the Diocese, the Committee on Canons recommends this resolution to the Convention for adoption.

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<sup>6</sup> Minutes to ESC/SRW Board of Directors' Special Meeting, June 25, 2015.

<sup>7</sup> *The Episcopal Church in the Diocese of California v. Episcopal Senior Communities*, No. CGC-15-547681, Complaint, Aug. 28, 2015; Cross-Complaint, Oct. 16, 2015.

<sup>8</sup> *The Episcopal Church in the Diocese of California v. Episcopal Senior Communities*, No. A146608, Order, Dec. 28, 2015.

