

From: HOA Attorney

To: Benjamin Long, President, Waterford Green Homeowners Association

Date: January 1, 2020

Re: Bylaws of Waterford Green Homeowners Association

I have been asked to summarize the above captioned bylaws to describe the processes and procedures that should be followed when electing officers and directors and taking other action of the Association. I will attempt to do so.

Quorum requirements. The bylaws require that a majority of the members are required to constitute a quorum for general business at membership meetings. If there is no quorum, there can be no binding action taken. A member of the Association is an owner of a lot in the subdivision, providing that only one vote can be cast per lot. At a meeting of the members, action can be taken and is considered approved when the affirmative vote of a majority of the quorum is obtained. If a majority vote of the quorum is not received, the motion would be deemed defeated.

An exception to this rule is found in Article V regarding the budget. Section 3 requires that the budget be approved by a "majority of the members", rather than the majority of the quorum which would be required for other business. This provision is, in my opinion, unclear and cumbersome and I am not sure that it reflects the intent of these bylaws. Section 3 seems inconsistent with Section 2 which provides that the board "shall prepare and submit to the members at each annual meeting of the members a proposed budget". The practical effect of this provision is that a separate vote would have to be taken for the budget and would require a majority of all of the members, not just a majority of the quorum. So, hypothetically, you could have a duly constituted meeting consisting of a quorum, or majority, of the members, but that meeting would not be sufficient to pass the budget unless the budget received the affirmative vote of a majority of the members. It is confusing.

Election of board members. Another unusual provision of the bylaws is in Article III dealing with the election of the board. Directors are elected at a meeting of the members. A quorum (more than 50% of the members) must be present either in person or by proxy at the meeting for the election to proceed. If there is no quorum, the meeting would have to be rescheduled. Section 4 permits members to cumulate their votes for directors. This means that each member shall have a total of votes equal to the number of directors to be elected. So, if you were attempting to elect four directors, each member would have four votes. He could sprinkle those votes among any or all of the candidates.

Amendment to bylaws. The bylaws provide that they can be amended upon resolution adopted by two thirds of the members. I would point out that this provision applies only to the bylaws, I have not reviewed the covenants and restrictions for the subdivision.

Please advise if you have other questions or concerns.