

MEMORANDUM



Fr: Lance Loewenstein

Dt: September 27th, 2025

Re: Voting Analysis, Bent Tree Harbor Home Owner's Association¹

This firm was retained to review the combined Declaration and Bylaws and Corporate Articles of Incorporation in the context of a recent vote of the Association's membership.

As a threshold matter, the documents are up-to-date and appear to be maintained thoughtfully by the membership. Unfortunately, there are some ambiguities in the language that may lead to misinterpretation. On those matters, I will provide my opinion as to what the true meaning of the ambiguous clauses are, with justification such that the Board, the Association and perhaps other counsel can come to their own conclusions.

Question 1: What is a Quorum?

There are two mentions of quorum in the Documents. First, in Article III Section 12 of the Declaration reads:

12. Amendments: The provisions of this Declaration may be modified or amended by 51% of owners in good standing present, either in person or absentee ballot, at a duly scheduled meeting provided that a quorum of fifteen percent (15% of the lots in the St are represented in person or by absentee ballot, with 5% actually present. Any and all modifications or amendments must be updated in the written Declarations, Covenants and R and/or Bylaws and duly recorded with the Benton County Recorder's office within 14 busine the date of duly called and scheduled meeting in which the vote was taken to make said mo and/or amendments to this Declaration. **VOTED REVISED 4/17/21**

This language applies only to the amendment of the Declaration, by its first few words, "The provisions of this Declaration may be modified or amended by a vote of 51% of the owners in good standing **present...**" This language does not apply to any other matter other than the amendment of the Declaration.

¹ The Corporation's Annual Registration was due with the Missouri Secretary of State on August 31st, 2025. If it has not yet been filed, that should be addressed in the next few weeks.

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Those owners **present** at the meeting must represent 15% of the total lots in the subdivision, which is 414 Lots. At least 138 of those owners must be present in person, the balance may be represented by proxies. There is no reference in this section as to lots/voters "...in good standing...", only "...Owners in good standing present..."

What is "Good Standing"? Art. III Sec. 4 tells us:

Notwithstanding any of the provisions of this Declaration to the contrary, a member's voting be suspended by the Association for a period to be determined by the Board representing the if such member violates any provision of this Declaration, the Rules and Regulations or the A By-Laws, pertaining to the payment of assessments. In such event, the member whose voting been suspended shall have no cause of action against the Association or the Board. **VOTE!**
4/27/19

The comparatively low majority required to modify the Declaration compared to other associations² perhaps explains the quorum requirement, making the modification of the Declaration more difficult than other Association decisions.

What is a quorum for Association decisions *other* than a Declaration Amendment? Article III Section 6 of the By-Laws:

Section 6. Quorum. Except as otherwise provided in the Declaration or Bylaw Association, the presence in person or by absentee ballot of members representing five percent of the total votes eligible to be voted by all Members of the Association shall be quorum at all meetings of the Association so long as five (5) percent of the total vote are present.

What the heck "...total votes eligible to be voted by all Members..." means literally, I cannot say. Without literal meaning, we have to turn to secondary sources. "Eligible" is defined in Section 7.1 of the same Article:

Section 7. Voting.

1. Each Owner of a lot shall be entitled to one vote for each lot owned. No Owner, however, be eligible to vote at any annual or special meeting until the assessments legally due and payable for all lots owned by such Owner are fully paid at least 30 days prior to the meeting.

I think it is a reasonable interpretation of those two sections combined to say that a quorum for meetings *other than those to*

² Often a supermajority above or around 66%

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amend the Declaration is 15% of the total "eligible" lots/voters, with 5% present in person. This seems to have been the practice for the special vote in September of 2025, although the 5% quorum requirement was not noted in the results that I reviewed. This language needs to be cleaned up in the amendment process to properly articulate the will of the Association.

Question 2: What is a "Majority"

It is in this context, one more vote than half. The Missouri Court of Appeals agrees. In *Himmel v. Leimkuehler*, 329 S.W.2d 264, the court referenced Webster's definition of majority as "the number greater than half; more than half of any total" *Himmel v. Leimkuehler*, 329 S.W.2d 264.

Article III, Section 7 of the Bylaws:

Section 7. Voting.

1. Each Owner of a lot shall be entitled to one vote for each lot owned. No Owner, however, be eligible to vote at any annual or special meeting until the assessments legally due and payable for all lots owned by such Owner are fully paid at least 30 days prior to the meeting.
2. The votes of Members, present either in person or by absentee ballot at any Association meeting at which a quorum has been established, casting a majority of the total votes eligible to be voted by such Members, shall decide any question for consideration, and shall constitute the act of and be binding upon the Association as otherwise provided by law, by the Declaration, or these Bylaws.

By the black letter of the bylaws, routine votes (not amending the Declaration) on business matters of the Association is decided by a majority vote of eligible Members at a meeting with a quorum. Not 51%.

Which brings up a construct that, although understandable, is likely wrong. That construct is the "Vote Quorum", which is an interpretation of the bylaws to say that in order to pass, say, an increase in assessments, there needs to be a vote that exceeds 51% of the *total eligible membership*. This is an understandable interpretation based on the ambiguous language of the clause.

However, it is my opinion that "...such members..." in the third sentence of 7.2 is referring back to "...Members, **present** either in person or by absentee ballot..." and not the total eligible membership.

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In other words, a majority vote of those **present in person and by proxy** decides votes. By that interpretation, one of the questions at the September 13th meeting would have passed.

There is a common sense reason why this interpretation is correct. By creating this construct, the possibility of any measure gaining enough votes to pass a measure is marginal, at best. Finding a way to get half the Membership of an HOA to show up for an open bar is a failing enterprise, much less asking them to devote their time to a weekend meeting or a proxy.

One of the the logical outcomes of this indefensible voting practice is to defer maintenance and degrade value for homeowners as inflation eats away at annual budgets. This language should be addressed in the Association's amendment process.

Question 3 – Assessment Increases

Assessment amounts are set by Art. 5 Section 2 of the Declaration. As such, any change to the annual assessment would be considered an amendment to the Declaration, subject to the 51% majority cited above for such amendments. See Question 1 above. Under that construct, the dues increase voted on September 13th would not have passed, as it would have required 436 votes.

Special assessments should be handled in the same manner, since they are addressed in the same section of the Declaration and no further instructions are provided for voting procedures other than the vote be "...held in the manner provided by the Declaration and Bylaws...", but clarifying language should be incorporated into the Associations amendment process.

Question 4 – Voting Form

As discussed above, there are several deficiencies in the voting form.

- 1) Failure to recite the 5% quorum requirement for in-person attendance of eligible voters.
- 2) Citing a need to meet a "Vote Quorum" that does not exist, in my opinion.
- 3) As a result, Electronic Voting amendment did not pass, and should have.

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I don't think these are malicious mistakes. HOA Boards are, as you know, voluntary. Boards can and do make good faith mistakes regularly. I will say that those Boards that engage legal counsel tend to make fewer mistakes. Given the size of this Association, a more active engagement of such professional services may be a topic of consideration at the Board level.