

This is an important notice regarding 13619 Cotton Court.

Mike – good morning.

Pursuant to your request, I have reviewed the Bylaws and Declaration to determine what the Association's governing documents require for a quorum. We do not have a copy of the Articles and therefore were not able to determine if the articles have a consistent or conflicting quorum requirement. (In most cases, however, the Articles do not mention quorum requirements.)

In accordance with Cottonwood Estates Bylaws, quorum to elect directors is defined as “the majority of votes of the voting membership present at the meeting.” (Art. IV. Sec. 2)

Furthermore, quorum to take other action at a meeting of the members is the same ... “at any meeting of the Members, a majority vote of those present and those voting by proxy shall be the act of the Association.” (Art. VI, Sec. 3).

For example purposes only, if only 3 members are present in person or by proxy at the annual meeting, then 2 members are the majority and will decide the election.

Importantly, this quorum requirement is in alignment with the relatively new 2012 election rules for subdivisions and townhomes (not applicable to condos), which requires that “any board member whose term has expired must be elected by owners who are members of the property owners' association.” Note that there is no mention of a quorum requirement. (This supersedes the old rule, which was to not hold an election and allow the current directors to stay on the Board if there was not a quorum present at the meeting.) Now, whether there is a quorum or not, any board member whose term has expired must be elected by the members (present at the meeting.)

With regard to the second question as to whether a husband and wife may both serve on the Board at the same time, the answer is yes. In accordance with the new 2012 laws, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board is void. Stated another way, any owner may run for and serve on the Board. (Note that the law only addresses owners. If stated in the Bylaws, non-owners can be prohibited from serving.)

At a Board meeting, both husband and wife, if serving at the same time, each get a vote. At a meeting of the members, however (e.g., annual or special meeting), “members are entitled to one (1) vote per lot.” (Declaration, Art. II, Sec. 3)

Below are a couple of provisions of the Texas Property Code to support our opinion. Call or reply with any questions.

Sec. 209.00591. BOARD MEMBERSHIP. (a) Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.

Sec. 209.00593. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be

elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1062 (H.B. 3176), Sec. 1, eff. June 14, 2013.

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