

# “Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

## An introduction to an ongoing dilemma

The biggest hurdle in revising our Declaration of Covenants and Restrictions (DCR's) is in the DCR's themselves. They have two inconsistent paragraphs that clouds the actual definition of what it takes to amend the DCR's.

This is an attempt to explain this problem without being to “wordy” or “heady” but yet trying to break it down to the nut's-an-bolts so hope fully we can all understand it..

Note: Rather than a lengthy discourse here, there are 3 different documents covering the aspects of this “voting power” issue. 1. Dilemma, 2. History, 3. Options

## 1968/1993 Documents both read the same

### ARTICLE V GENERAL PROVISIONS.

1. TERM. These covenants and restrictions are to run with the land and shall be binding on all parties and person claiming under them for a period of 25 years from the date this Declaration is recorded. After the period of 15 years the covenants and restrictions shall be automatically extended for successive periods of ten years without further action of declarants. Unless an instrument signed by a majority of the then owners of all lots within the property has been recorded, agreeing to extinguish or change the covenants and restrictions in whole or in part.

2. AMENDMENT OF DECLARATION. This Declaration may be amended at any time, by the affirmative vote of two-thirds majority of the voting power of the SUNLIGHT WATERS COUNTRY CLUB, INC. at any annual meeting or any special meeting specifically called for that purpose.

**What is the problem?** - See the **Bold Face** highlights and the comments that goes with them.

### ARTICLE V GENERAL PROVISIONS.

1. **TERM.** These covenants and restrictions are to run with the land and shall be binding on all parties and person claiming under them **for a period of 25 years** from the date this Declaration is recorded. **After the period of 15 years** the covenants and restrictions shall be **automatically extended for successive periods of ten years ... without further action of declarants.** ... **Unless an instrument signed by a majority of the then owners of all lots** within the property has been recorded, ... **agreeing to extinguish or change the covenants and restrictions in whole or in part.**

NOTE: This paragraph says “... an instrument signed by a **majority ... of the then owners ... of all lots**

The term “**majority**” normally refers to a “simple majority” which usually means ½ the total plus 1 or sometimes 51% ...

The words “**then owners**” addresses the fact that the **original developers owned ALL the lots**, but were in the **process of selling them**, so that **no one knew who or how many** lot owners there would be at each of the anniversary dates.

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(I.e. 1<sup>st</sup> 15yrs, then each consecutive 10yrs)

So at the anniversary dates: ... (simple) majority of total lot owners could: agree to:  
**extinguish or change ... the covenants and restrictions ... in whole or in part.**

This paragraph basically says:

Every 10 yrs (simple) majority of agreeing lot owners can change ... whatever?

However, Paragraph 2. reads:

**2. AMENDMENT OF DECLARATION.** This Declaration **may be amended at any time, ... by the affirmative vote of two-thirds majority ... of the voting power** of the SUNLIGHT WATERS COUNTRY CLUB, INC. at any annual meeting or any special meeting specifically called for that purpose.

NOTE: This very next paragraph says:

“... **amended at any time** ... and the last line says:  
at **any annual meeting** ... or ... **any special meeting** specifically called for that purpose.

So at ... any time

any annual meeting

OR any special meeting (called for that purpose)

Not just at the anniversary dates

But by the ... **affirmative vote ... of two-thirds majority** ...

(A very typical “super majority” rule for most organizations)

Of the ... **“voting power”**... of the **SUNLIGHT WATERS COUNTRY CLUB, INC.**

Now we get to where it starts getting confusing, ...

**What is the “voting power”** of:

Sunlight Water Country Club Inc (SLWCC) ???

There’s no question of who SLWCC is, but what is its “voting power”

**1.** Does the “voting power” refer back to the “then lot owners” ...?

If this is the intent of “voting power” then any year except the anniversary years would need a 2/3’s affirmative vote compared to a 51% affirmative vote

However this paragraph specifically says “... of the Sunlight Waters Country Club Inc. ...” not “lot owners” so that technically is a different group or definition.

**2.** Does the “voting power” refers to all “members” of the SLWCC.?

To a certain extent YES ... because all “lot owners” are inherently “members” and by same measure “all members” are “lot owners” So the voting potential of SLWCC is the total of “ALL” its members/lot owners which would be SLWCC’s “voting power”

This then, by deductive reasoning basically is the same a question “1.” above.

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However, those eligible to vote at any membership meeting are not the same as the total “members” or “lot owners.

SO ...

### **3. Does it mean the “eligible voters” of the SLWCC’s Membership?**

The Bylaws specifically defines/narrows down who can (or cannot) vote at:  
“ANY” membership meeting

If so, then this is a different scenario/definition of “voting power”, than the two previous ones, yet, is spelled out in the Bylaws.

The **Bylaws** sets up three prerequisites necessary for a vote to pass:

**First** there is a required quorum of 20+ members to transact any business:

#### **ARTICLE III, Meetings, Section 3.**

“At all Annual and Special Meetings of the members of the Corporation, twenty members present, in person, or by written proxy filed with the Secretary at or before the meeting, shall constitute a quorum for the transaction of any business appropriate to a members’ meeting. ...”

**Second** the member must be “in good standing”

#### **ARTICLE III, Meetings, Section 4.**

“Members shall be entitled to cast one vote per lot owned ... In order to vote, ***the member must be in good standing, that is***, all dues, debts, and assessments shall be paid on or before ***March 31<sup>st</sup>*** of each year, following the meeting at which they have been fixed. ...”

And this paragraph goes on to say “... ***The voting power of the corporation is the total of all members who are in good standing with the Corporation in accordance with these Bylaws.***”

Now according to the Bylaws, the voting power is the total of all members in good standing, not the total of the members/lot owners. This may or may not be the same number depending on members who have or do not have their “dues, debts, and assessments paid up and within the right time lines. This total number, however, is a larger number than the 20 members needed for a quorum.

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**Third** and last but not least, what is the margin of votes?

The last sentence of **ARTICLE III, Meetings, Section 3.** says:

“A majority of the votes of the members constituting a quorum shall be sufficient to transact business unless a greater number of votes if required by law, the Articles of Incorporation, or these Bylaws with respect to some specified action.

This translated says that of the 20+ members present, a majority of of those votes, or 51%. So if there were just 20 members present, 11 votes would pass the vote, whatever issue being voted on is, unless the issue requires 2/3rds spelled out elsewhere.

This is the normal way all our annual meetings conduct business, however we seldom have only 20 members present. We probably average 30-40 members, which would mean 16-21 votes respectively.

This paragraph also states:

“... unless a greater number of votes if required by law, the Articles of Incorporation, or these Bylaws with respect to some specified action.”

There are two places that our bylaws specifically “a greater number of votes”.

One is in **Article I, Purpose, Section 2.**, states a 2/3rds majority of “members in good standing” to change/alter the purposes which are found in our Articles of Incorporation.

The Second is in **ARTICLE VIII, Dues, Section 1.** which says the corporation cannot raise the dues without a 2/3rds vote of the members present at an annual meeting.

So since there are only these two specific 2/3rds vote counts, all other votes would be the simple majority.

## **Synopsis of the problem**

With all that spelled out above, we have three different possible definitions/scenarios for the “voting power” of Sunlight Waters and two different scenarios on the number of votes needed to pass any amendment on the DCR’s

1. All “lot owners”?
2. All “members in good standing”
3. The 20+ member of the quorum  
And 51% verses 2/3rds

Now see Voting Power “History” and Voting Power “Options”