

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE BOARD & COUNSEL REVIEW

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ARTICLE 6
MEMBERSHIPS AND VOTING

6.1 Membership in the Association. Each Owner of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Lot Owner. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

6.2 Voting Rights. Each Member shall be entitled to one vote for each Lot owned. No change in the ownership of a Lot shall be effective for voting purposes until the Association receives written notice of such change together with satisfactory evidence of the transfer. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one vote be cast with respect to any Lot owned. Fractional votes are not allowed. In the event a Lot is owned by more than one Person and such Owners are unable to agree on how their vote(s) shall be cast, they shall not be entitled to vote on the matter in question. If any Owner exercises his/her vote on any matter, it will be conclusively presumed that the Owner is acting with the authority and consent of all the other Owners of the Lot unless an objection is made to the Board, in writing, at or prior to the time the vote is cast.

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6.3 Suspension of Voting Rights. The Association may suspend the voting rights of any Member for any period during which any Assessment against his/her Lot by the Association remains unpaid and delinquent.

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6.4 Members' Rights. Each member shall have the rights, duties and obligations set forth in the Community Documents and the Architectural Design guidelines as the same may be amended from time to time.

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ARTICLE 7
ASSESSMENTS AND ESTABLISHMENT OF LIEN

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7.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Lot Owner, upon the recordation of a deed to any Lot, whether or not it shall be so stated in such deed, agrees and covenants to pay to the Association: (A) Annual Assessments or charges, (B) Special Assessments, and (C) Reimbursement Assessments. These Assessments shall be established and collected as provided in this Article. All Assessments levied against a Lot, together with interest from the date of delinquency

Sec. 6.3 (p. 22): Voting rights suspension clause lacks Arizona statutory notice, hearing due process, or delinquency safeguards (A.R.S. §§ 33-1803, 33-1242 (21-Day Certified Mail Notice & Hearing)).

Statutory / Legal Reference: A.R.S. §§ 33-1803, 33-1242 (21-Day Certified Mail Notice & Hearing); A.R.S. §§ 33-1801 to 33-1819 (Arizona Planned Communities Act); A.R.S. Title 10, Ch. 24 - 40 (Arizona Nonprofit Corporation Act)

Statutory Comparison: Under Arizona community association and nonprofit corporation statutes (A.R.S. §§ 33-1803, 33-1242 (21-Day Certified Mail Notice & Hearing); A.R.S. Title 10, Ch. 24 - 40 (Arizona Nonprofit Corporation Act)), member voting rights are a fundamental corporate governance right and may not be summarily suspended without strict compliance with statutory delinquency thresholds, prior written notice, and an opportunity to be heard.

CURRENT WORDING IN DOCUMENT:

Suspension of Voting Rights. The Association may suspend the voting rights of any Member for any period during which any Assessment against his/her Lot by the Association remains unpaid and delinquent.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Arizona law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with A.R.S. §§ 33-1803, 33-1242 (21-Day Certified Mail Notice & Hearing) and A.R.S. Title 10, Ch. 24 - 40 (Arizona Nonprofit Corporation Act).