ISSUE #1

Section 9.12 - Sample Provision Excerpt (Public Preview)

Right of Discipline. To suspend the voting rights and right to use the recreational facilities located on the Common Area and Association Property of a Member who is in default in the payment of any assessment, as provided in Article V of these Bylaws.

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. 9.12 (p. 1): Election or voting provision conflicts with California Civil Code §§ 5100 - 5145 requirements for secret ballots, independent Inspector of Elections, non-suspension of member voting rights (§ 5105(g)(1)), or AB 2159 electronic voting safeguards.

Statutory / Legal Reference: Cal. Civ. Code §§ 5100, 5105, 5110 & 5115 (SB 323 / AB 2159)

Statutory Comparison: Under Cal. Civ. Code §§ 5100 - 5115, elections regarding directors, assessments legally requiring a vote, governing document amendments, and grants of exclusive use of common area must be conducted by secret ballot (double-envelope paper ballot or compliant electronic secret ballot under AB 2159, except that electronic secret ballots remain prohibited for votes on regular or special assessments under § 5105(i)). Under § 5110, the association must select 1 or 3 independent third-party Inspectors of Elections (who cannot be directors, candidates, relatives, or the management company unless expressly authorized by election rules - and under SB 323, persons currently employed or under contract with the association for compensable services may not serve unless permitted by statute). Under § 5105(g)(1), an association cannot deny a ballot to a member for any reason other than not being a member at the time when ballots are distributed (suspending a member's right to vote for assessment delinquency or rule violations is unlawful).

CURRENT WORDING IN DOCUMENT:

Right of Discipline. To suspend the voting rights and right to use the recreational facilities located on the Common Area and Association Property of a Member who is in default in the payment of any assessment, as provided in Article V of these Bylaws.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to California Civil Code §§ 5100 - 5145, all elections of directors, recall elections, governing document amendments, and assessment votes shall be conducted by secret ballot overseen by one (1) or three (3) independent Inspectors of Elections meeting the independence requirements of Civil Code § 5110. In accordance with Civil Code § 5105(g)(1), a ballot shall not be denied to any person who is a member at the time ballots are distributed. Any electronic secret balloting shall comply with the opt-in/opt-out, 90-day notice, and assessment-vote exclusion requirements of Civil Code §§ 5105(i) and 5115 (AB 2159).