



ISSUE #1

year term.

Section 3. Any Director may be removed by concurrence of 75% of the members of the Directors respective area, ratified by the Board of Directors, at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members of the Association of the respective area and said vacancy shall be filled by a person residing in the same area as the one removed

Section 4. Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors shall be filled by majority vote of the members of the Board of Directors at any regular or special meeting. The vacancy shall be filled by a person residing in the same area where the vacancy occurred

and that person shall serve until the next election.

Section 5. The term of each directors's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

Section 6. Power and duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things as are not by the Articles of Incorporation or these By-Laws directed to be exercised and done by the members or officers. The power of the Board shall include, but not limited to, the following:

a. All powers and duties of the Association as set forth in the Articles of Incorporation of the Association, except as limited as provided above.

b. To prepare and adopt an annual operating budget, which budget shall be sufficient in amount to pay for all necessary expenses and expenditures.

c. To prepare a detailed report of the acts, accounts, and statements of income and expenses for the previous year, and present same at the annual meeting of the members.

d. To determine who will act as legal counsel for the Association whenever necessary.

e. To determine the depository for the funds of the Association.

f. To acquire the necessary personnel needed for the maintenance, care, and upkeep of the common areas of the Association, and set the salaries of said personnel.

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 3. (p. 10): Governing document authorizes the Board of Directors to remove an elected Director from the Board (or declare a director's seat vacant for missed meetings) without a membership recall vote, conflicting with Fla. Stat. §§ 720.303(10)(a) & 617.0808(1).

Statutory / Legal Reference: Fla. Stat. § 720.303(10)(a) & 617.0808(1)

Statutory Comparison: Under Fla. Stat. §§ 720.303(10)(a) & 617.0808(1), any member of the board of administration/directors may be recalled and removed from office with or without cause only by the vote or agreement in writing of a majority of all the voting interests of the members. Under Fla. Stat. § 617.0808(1) and Florida DBPR arbitration precedent, the Board of Directors may remove an officer from an executive office but has no legal authority to remove an elected director from the Board itself or impose non-statutory recall blackout periods.

CURRENT WORDING IN DOCUMENT:

Any Director may be removed by concurrence of 75% of the members of the Directors respective area, ratified by the Board of Directors, at a special meeting called for that purpose. The vacancy in the Board of Directors i so created shall be filled by the members of the Association of the respective area and said vacancy shall be filled by a person residing in the same area as the one removed

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. §§ 720.303(10)(a) & 617.0808(1), an elected Director may be removed from the Board of Directors only by a recall vote or written recall agreement of a majority of all voting interests of the Association (or by automatic statutory vacancy under Fla. Stat. §§ 720.306(9) / 718.112(2)(d) & (o)). The Board of Directors may remove an officer from their officer position at any time, without removing such person from their elected seat as a Director.