

Boca Grande Club Condominium Association Phase X - Declaration & Governing Covenants - Page 2

Section 6: [Article III, Section 3.5] Limited Proxies and Secret Ballot Director Elections

Unit Owners may not vote by general proxy in Condominium Association matters, except that limited proxies conforming to the form adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes may be used to establish a quorum and to vote on reserves, amendments to the Declaration or Bylaws, and any

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for which Chapter 718, Florida Statutes, requires or permits a vote of the Unit Owners. Members of the Board of Administration shall be elected by written secret ballot or voting machine in accordance with Section 718.112(2)(d)4., Florida Statutes.

MARKUP #1 ->

MARKUP #1 · OUTDATED STATUTE LOCK

BOARD & COUNSEL REVIEW

Sec. Article III, Section 3.5 (p. 2): Declaration references Florida Statutes without express Kaufman language ("as amended from time to time"), risking unconstitutional impairment of contract challenges upon statutory changes.

Statutory / Legal Reference: Kaufman v. Shere, 347 So. 2d 627 (Fla. 3d DCA 1977); Cohn v. Grand Condo. Ass'n, 62 So. 3d 1120 (Fla. 2011)

Statutory Comparison: Under Florida Supreme Court precedent (Cohn), legislative amendments that impair vested contract rights cannot be applied retroactively to an existing community unless the Declaration contains express language adopting the statute "as amended from time to time" (the Kaufman doctrine).

CURRENT WORDING IN DOCUMENT:

Homes may be used to establish a quorum and to vote on reserves, amendments to the Declaration or Bylaws, and any other matter for which Chapter 718, Florida Statutes, requires or permits a vote of the Unit Owners. Members of the Board of Administration shall be elected by written secret ballot or voting machine in accordance with Section 718.112(2)(d)4., Florida Statutes.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

In accordance with Kaufman v. Shere, amend the governing law clause to read: "...governed by Chapter 718 [or 720], Florida Statutes, as the same exists on the date hereof and as the same may be amended from time to time."