

MARKUP #1 ->

the Class A Members), shall decide any question brought before a meeting at which a quorum is present and shall constitute official action by the Members of the Association, or the vote of the majority of those Members (including, in the aggregate, Class A Members and, until Turnover, the Class B Member) responding to a mail referendum administered in accordance with the requirements of Section 6.5 hereof shall decide any question presented to the Members by such mail referendum and shall constitute official action by the Members of the Association, unless, the foregoing provisions for meetings or mail referenda notwithstanding, the question is one upon which, by express provisions of statute, or of the Declaration or of the Articles, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. Nothing contained herein shall be construed in derogation of the rights of the Class B Member, including but not limited to the right of the Class B Member to approve, in its sole discretion, amendments to the Declaration and the Articles.

Section 6.10 Proxies. A Member may appoint any person as a proxy. All proxies shall be in writing, signed by the Member voting by proxy and filed with the Secretary at least twenty-four (24) hours before any meeting or meetings for which the proxy was given before the proxy may vote. Proxies shall be valid only for the particular meeting or meetings specified therein. If a Lot is owned jointly by two or more co-owners, and if the said co-owners have not designated one (1) of them as the voting Member, then a proxy, to be valid, must be signed by all such co-owners. Anything herein to the contrary notwithstanding, every proxy shall automatically cease upon sale, transfer, demise, or other disposition by the Member of such Member's Lot.

Section 6.11 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as all transactions occurring at the meeting. The order of business at all annual or special meetings of the Members shall be as follows:

- <!--[if !supportLists]-->a) <!--[endif]-->Roll call.
- <!--[if !supportLists]-->b) <!--[endif]-->Proof of notice of meeting or waiver of notice.
- <!--[if !supportLists]-->c) <!--[endif]-->Reading of the minutes of preceding meeting.
- <!--[if !supportLists]-->d) <!--[endif]-->Reports of officers.
- <!--[if !supportLists]-->e) <!--[endif]-->Reports of committees.
- <!--[if !supportLists]-->f) <!--[endif]-->Election of directors (if election to be held).
- <!--[if !supportLists]-->g) <!--[endif]-->Unfinished business.
- <!--[if !supportLists]-->h) <!--[endif]-->New business.

Roberts' Rules of Order (latest edition) shall govern Members meetings when not in conflict with the Declaration or the Articles and these Bylaws of the Association.

Section 6.12 Action Without a Meeting. Any action required by law to be taken at a meeting of Members, or any action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members, and such consent shall have the same force and effect as a unanimous vote of the Members.

ARTICLE 7

Termination of Membership

Subject to the provisions of Section 1.4 of the Articles, the termination of membership in the Association shall not relieve or release any such former member from any liability or obligations incurred pursuant to or in accordance with the provisions of the Declaration, the Articles, these Bylaws or the Rules and Regulations or arising as a result of membership in the Association or ownership of a Lot during the period of such membership in the Association. Further, the termination of membership in the Association shall not impair any rights or remedies which the Association may have against such former Member

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 6.12 (p. 4): Governing document purports to authorize the Board of Directors to take official Board action outside of a noticed meeting by written consent signed by the directors, conflicting with the open-meeting sunshine mandate of Fla. Stat. § 720.303(2)(a)-(b).

Statutory / Legal Reference: Fla. Stat. § 720.303(2)(a)-(b)

Statutory Comparison: While general nonprofit corporations under Fla. Stat. § 617.0821 may act by unanimous written consent unless prohibited, Fla. Stat. § 720.303(2)(a)-(b) overrides general corporate law for Florida community associations by requiring that all Board meetings be open to all members with at least 48 hours' posted notice and owner right to speak on all agenda items. Taking formal Board action by written consent in the absence of a noticed meeting deprives owners of their statutory right to attend and speak prior to Board votes.

CURRENT WORDING IN DOCUMENT:

Action Without a Meeting. Any action required by law to be taken at a meeting of Members, or any action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members, and such consent shall have the same force and effect as a unanimous vote of the Members.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Notwithstanding Fla. Stat. § 617.0821, pursuant to Fla. Stat. § 720.303(2)(a)-(b), all official actions and votes of the Board of Directors (other than emergency actions authorized by statute) shall be taken only at a duly noticed meeting of the Board open to all Members at which Members have the right to attend and speak on designated agenda items.

ISSUE #1