

MARKUP #1 ->

MARKUP #1 · GOVERNANCE & VOTING CONTROL RISK

BOARD & COUNSEL REVIEW

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ARTICLE 10.
AMENDMENTS

These Bylaws may be amended by the following manner:

10.1 **Proposal.** The Board of Directors or thirty percent (30%) of the total Voting Interests of the Association may propose an amendment to the Bylaws.

10.2 **Adoption.** The Bylaws may be amended upon the affirmative approval of at least two-thirds (2/3) of the Association’s Board of Directors at a duly-noticed Board meeting. Alternatively, an amendment to the Bylaws may be approved by at least two-thirds (2/3) of the eligible Voting Interests present (in person or by proxy) and voting at a duly-noticed membership meeting at which a quorum is obtained.

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10.3 **Automatic Amendment.** As an exception to the foregoing, the Bylaws may be amended by the Board of Directors, if necessary, to make the same consistent with the provisions of the Declaration. Whenever Chapters 607, 617 or 720, Florida Statutes, or other applicable Florida or Federal laws or administrative regulations are amended so that these Articles of Incorporation are inconsistent with the applicable law or administrative rules, the Board of Directors, without a vote of the Members, may, but shall not be under a duty or obligation to, adopt by Majority vote of the Board, amendments to the Bylaws of Incorporation to make them consistent.

10.4 **Limitation on Amendments.** Pursuant to Section 720.306(1)(c), Florida Statutes, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a Lot or increase the proportion or percentage by which a Lot shares in the common expense of the Association unless the record Lot Owner and all record owners of liens on the Lots join in the execution of the amendment. A change in the quorum requirements is not an alteration of Voting Interests. The merger or consolidation of one or more associations under a plan of merger or consolidation pursuant to Chapter 617, Florida Statutes is not a material or adverse alteration of the proportionate voting interest appurtenant to a Lot.

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10.5 **Certificate of Amendment.** The Association shall record a copy of each amendment in the Public Records of Manatee County, Florida along with a Certificate of Amendment executed by the appropriate officers of the Association with the formalities of a deed. An amendment becomes legally effective when filed and recorded as provided herein.

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ARTICLE 11.
MISCELLANEOUS

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11.1 **Interpretation.** Unless defined herein, terms used herein shall have the same meaning as provided in the Declaration. The Board of Directors is responsible for interpreting the provisions of the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations. The Board of Directors’ interpretation shall be binding upon all parties unless wholly unreasonable and arbitrary. A written opinion rendered by legal counsel that an interpretation adopted by the Board of Directors is not wholly unreasonable and arbitrary shall conclusively establish the validity of such interpretation.

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11.2 **Definitions.** If a term is not defined herein or in the Declaration or is deemed ambiguous, the Board of Directors shall be responsible for defining the term in its reasonable discretion. The Board of

Sec. 10.3 (p. 18): Governing document authorizes the Board of Directors to unilaterally amend the Association Bylaws without a membership vote, creating statutory risk under Fla. Stat. §§ 720.306(1)(b)-(c) & 617.1002.

Statutory / Legal Reference: Fla. Stat. § 720.306(1)(b)-(c) & 617.1002

Statutory Comparison: Under Fla. Stat. §§ 720.306(1)(b)-(c) & 617.1002, amendments to the governing documents require the affirmative vote of the voting interests of the membership (defaulting to two-thirds (2/3) of the voting interests if not otherwise specified), and no amendment may materially and adversely affect the proportionate voting interest or rights of a parcel/unit owner without owner approval, nor takes effect until properly recorded in the public records with the required statutory text formatting (underlined additions and stricken deletions).

CURRENT WORDING IN DOCUMENT:

Automatic Amendment. As an exception to the foregoing, the Bylaws may be amended by the Board of Directors, if necessary, to make the same consistent with the provisions of the Declaration. Whenever Chapters 607, 617 or 720, Florida Statutes, or other applicable Florida or Federal laws or administrative regulations are amended so that these Articles of Incorporation are inconsistent with the applicable law or administrative rules, the Board of Directors, without a vote of the Members, may, but shall not be under a duty or obligation t

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. §§ 720.306(1)(b)-(c) & 617.1002, any amendment to these Bylaws shall require approval by the affirmative vote of the Members (not less than a majority of a quorum or two-thirds of the voting interests as required by statute) at a duly noticed meeting, shall show additions underlined and deletions stricken through, and shall become effective only upon recording in the public records of the County.