

MARKUP #1 ->

1. GENERAL PROVISIONS

A. Applicability.

These Bylaws provide for the self-government of The Woods of Parkview Homeowners Association, Inc. in accordance with the Articles of Incorporation filed with the Secretary of State of Georgia, and the Declaration of Covenants for Woods of Parkview, recorded in the Gwinnett County, Georgia land records ("Declaration").

B. Name.

The name of the corporation is The Woods of Parkview Homeowners Association, Inc. ("Association").

C. Definitions.

The terms used herein shall have their generally accepted meanings or the meanings specified in Paragraph 2 of the Declaration.

D. Membership.

An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As more fully provided below, an Owner's spouse or Domestic Partner may exercise the membership powers and privileges of the Owner. If more than one Person holds title to a Lot, the membership shall be shared in the same proportion as the title, but there shall be only one membership and one vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of the Lot. Membership may be transferred only in connection with the transfer of the Lot.

E. Voting.

Each Lot shall be entitled to one vote, which vote may be cast by the Owner, the Owner's spouse or Domestic Partner, or by a lawful proxy as provided below. When more than one Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves. In no event shall more than one vote be cast with respect to any Lot. If only one co-Owner or only an Owner's spouse or Domestic Partner attempts to cast the vote for a Lot, it shall be conclusively presumed that such vote is authorized for the Lot. If the co-Owners or an Owner and his or her spouse or Domestic Partner disagree about how to cast the Lot's vote, and two or more of them attempt to cast the Lot's vote, such Persons shall not be recognized and such votes shall not be counted.

If a Lot is shown on the books and records of the Association to be more than 30 days past due in any assessment or charge or if the voting rights for such Lot have been suspended, neither the Owner of such Lot nor the Owner's spouse or Domestic Partner shall be eligible to: (1) vote, either in person or by proxy; (2) act as proxy for any other Owner; (3) issue a written consent; (4) be elected to the Board of Directors; or (5) vote as a Director (if on the Board of Directors when such Lot became delinquent or had it's voting rights suspended). In establishing the total number of eligible votes for a quorum, a majority, or any other purposes, such Lot shall not be counted as an eligible vote.

F. Electronic Communications.

(1) Records and Signatures.

Whenever the Association's Legal Instruments require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an electronic record if the

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 2 (p. 2): Voting rights suspension clause authorizes automatic suspension during any period an assessment remains unpaid without the 15-day prior written notice and pre-effective hearing mandated by O.C.G.A. § 14-3-621.

Statutory / Legal Reference: O.C.G.A. § 14-3-621 (Georgia Nonprofit Corporation Code - 15-Day Written Notice & Opportunity to Be Heard Before Suspension)

Statutory Comparison: Under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-621, a member may not be suspended or terminated, and their membership/voting rights may not be suspended, except pursuant to a procedure that is fair and reasonable and carried out in good faith, requiring not less than fifteen (15) days' prior written notice of the suspension and the reasons therefor, and an opportunity for the member to be heard not less than five (5) days before the effective date of the suspension.

CURRENT WORDING IN DOCUMENT:

any assessment or charge or if the voting rights for such Lot have been suspended, neither the Owner of such Lot nor the Owner's spouse or Domestic Partner shall be eligible to: (1) vote, either in person or by proxy; (2) act as proxy for any other Owner; (3) issue a written consent; (4) be elected to the Board of Directors; or (5) vote as a Director (if on the Board of Directors when such Lot became delinquent or had it's voting rights suspended).

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Georgia law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with O.C.G.A. §§ 44-3-223, 44-3-76 and O.C.G.A. Title 14, Ch. 3 (Georgia Nonprofit Corporation Code).

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