ISSUE #1

Section 5. - Sample Provision Excerpt (Public Preview)

Duration of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the Date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

MARKUP #1 ->

MARKUP #1 · MRTA 30-YEAR COVENANT EXPIRATION RISK

BOARD & COUNSEL REVIEW

Sec. 5. (p. 1): Declaration duration/auto-renewal clause purports to extend covenants automatically or in perpetuity without referencing mandatory 30-year Marketable Record Title Act (MRTA) preservation recording requirements under N.C.G.S. Ch. 47B (§§ 47B-2, 47B-4) (North Carolina Real Property Marketable Title Act - 30-Year Root of Title).

Statutory / Legal Reference: N.C.G.S. Ch. 47B (§ 47B-2, 47B-4) (North Carolina Real Property Marketable Title Act - 30-Year Root of Title)

Statutory Comparison: Self-executing perpetual or automatic-renewal duration clauses ("shall automatically extend for successive periods of 10 years" or "in perpetuity") DO NOT prevent statutory extinguishment under N.C.G.S. Ch. 47B (§§ 47B-2, 47B-4) (North Carolina Real Property Marketable Title Act - 30-Year Root of Title). Unless the Board timely records a statutory Notice of Preservation in the county land records prior to the 30-year root-of-title deadline, the Declaration's covenants and assessment authority are extinguished by operation of law as to parcels whose root of title post-dates the original recording.

CURRENT WORDING IN DOCUMENT:

Duration of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the Date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Notwithstanding any contrary provision in this section, this covenant shall be administered and enforced strictly in accordance with N.C.G.S. Ch. 47B (§ 47B-2, 47B-4) (North Carolina Real Property Marketable Title Act - 30-Year Root of Title). Association counsel should review this provision and adopt a conforming amendment or board policy resolution to align with N.C.G.S. Ch. 47B (§ 47B-2, 47B-4) (North Carolina Real Property Marketable Title Act - 30-Year Root of Title).