



MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

with the decision of the majority in voting either in person or by proxy unless another joint Owner is voting to the contrary, either in person or by proxy. If more than one such joint Owner is voting in person or by proxy, the single vote of such joint Owners shall be cast in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners shall be permitted to vote as to any such matter upon which a majority decision cannot be reached.

3.3 Cumulative Voting Prohibited: Cumulative voting shall not be permitted as to any matter placed before the membership for a vote, including election of Directors.

3.4 Suspension of Voting Rights. All voting rights appurtenance to ownership of a Lot shall or may be suspended in accordance with the following:

3.4.1 Automatic Suspension. All voting rights appurtenant to a Lot shall be automatically suspended during any period of time any Assessments are owed to the Association covering such Lot, and each Member hereby waives the right to any further notice as to such automatic suspension. During such suspension no Owner of the affected Lot, or proxy or other person acting on behalf of such Owner, shall be entitled to vote upon any matters coming before the membership.

3.4.2 Suspension After Notice. Upon not less than ten (10) days written notice, the Board of Directors may suspend the voting rights appurtenant to any Lot as to which the Owner or any occupant thereof, or their respective agents, employees, guests or invitees, are in violation of any provisions of applicable Governing Documents or Rules and Regulations as determined in the sole good faith discretion of the Board of Directors. During such period of suspension no Owner of the affected Lot shall be entitled to vote upon any matters coming before the membership. In the event of such suspension, any affected Owner shall be entitled to petition the Board of Directors in writing for reinstatement of voting rights and to an opportunity to be heard thereon at a regular or special meeting of the Board, but the good faith decisions of the Board regarding any such petition shall be final.

3.4.3 Good Standing. A Member shall **not** be deemed in good standing during any period during which the member's voting rights have been suspended, including any period during which any Assessments are owed to the Association.

3.5 Voting Procedures. Voting on any matter brought before the membership shall be conducted in accordance with the following:

3.5.1 Proxy or Ballot. At all meetings of Members, voting may be in person or by proxy. The Board of Directors may also authorize Members to cast a ballot vote by mail which shall be deemed to be voting in person as to but only as to election of Directors, and in such case the mail in ballot shall state a date certain by which same must be received by the Association.

Sec. 3.4 (p. 11): Covenant suspending owner voting rights for delinquency or covenant violations is void under the Texas Property Code.

Statutory / Legal Reference: Tex. Prop. Code § 209.0059(a) & § 209.00592

Statutory Comparison: Under Texas Property Code § 209.0059(a), a provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

CURRENT WORDING IN DOCUMENT:

2 Suspension After Notice. Upon not less than ten (1 O) days written notice, the Board of Directors may suspend the voting rights appurtenant to any Lot as to which the Owner or any occupant thereof, or their respective agents, employees, guests or invitees, are in violation of any provisions of applicable Governing Documents or Rules and Regulations as determined in the sole good faith discretion of the Board of Directors.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Tex. Prop. Code § 209.0059(a), no Owner may be disqualified from voting in an Association election or on any matter concerning the rights or responsibilities of the Owner for nonpayment of assessments or covenant violations.

ISSUE #1