Section 5.16 - Sample Provision Excerpt (Public Preview)

Amendment to Bylaws. repealed and new Bylaws may be adopted by a vote totaling more than two-thirds of the eligible votes entitled to be cast by record owners present in person or by proxy, but in no event less than 51 percent of the total eligible votes entitled to be cast by all record Owners in the Association, as specified in the Restrictive Covenants and the Articles. An Owner whose voting rights have been suspended under the Declarations shall not be entitled to vote.

ISSUE #1

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING — BOARD & COUNSEL REVIEW

Sec. 5.16 (p. 18): Provision authorizes holding regular Board of Directors meetings "without notice" or taking Board action by written consent outside a noticed open meeting, conflicting with Tex. Prop. Code §§ 209.005, 82.1141 & 1 TAC § 70.3 (Open Records Cost Schedule).

Statutory / Legal Reference: Tex. Prop. Code Ch. 209 (Texas Residential Property Owners Protection Act) & 22 TAC § 535.401 (TREC Management Certificate Rules); Tex. Prop. Code § 209.005 & 1 TAC § 70.3 (Open Records Cost Schedule)

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:

Amendment to Bylaws. repealed and new Bylaws may be adopted by a vote totaling more than two-thirds of the eligible votes entitled to be cast by record owners present in person or by proxy, but in no event less than 51 percent of the total eligible votes entitled to be cast by all record Owners in the Association, as specified in the Restrictive Covenants and the Articles. An Owner whose voting rights have been suspended under the Declarations shall not be entitled to vote.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amendment to Bylaws. repealed and new Bylaws may be adopted by a vote totaling more than two-thirds of the eligible votes entitled to be cast by record owners present in person or by proxy, but in no event less than 51 percent of the total eligible votes entitled to be cast by all record Owners in the Association, as specified in the Restrictive Covenants and the Articles. An Owner whose voting rights have been suspended under the Declarations shall not be entitled to vote. [STATUTORY VOTING RIGHTS PROTECTION]: Pursuant to Tex. Prop.