

Section XV - Sample Provision Excerpt (Public Preview)

Chairman of the Board. B. T e n of Office. While Declarant is a Class B Member, Declarant shall appoint the Directors, of whom shall serve one year terms, and fill any vacancies on the Board. A t the first: annual meeting after.

ISSUE #1



MARKUP #1 ->



MARKUP #1 · DOCUMENTS CONTRADICT

BOARD & COUNSEL REVIEW

Sec. XV (p. 5): Hierarchy conflict (DECLARATION trumps BYLAWS):
DECLARATION mandates that each Director must be a Member of the Association, whereas BYLAWS states that Directors "need not be Members of the Association."

Statutory / Legal Reference: Tex. Prop. Code Ch. 209 (Texas Residential Property Owners Protection Act) & 22 TAC § 535.401 (TREC Management Certificate Rules) & Restatement (Third) of Property (Servitudes) § 6.7 (Governing Document Hierarchy)
Statutory Comparison: Under the governing document hierarchy (and the Declaration's supremacy clause), the recorded DECLARATION (Controlling Covenant) overrides the subordinate BYLAWS. Because the DECLARATION requires every post-turnover Director to be a Member (and automatically removes any Director who ceases to be a Member), the BYLAWS provision purporting to allow non-member Directors is overridden and...

CURRENT WORDING IN DOCUMENT:

Chairman of the Board. B. T e n of Office. While Declarant is a Class B Member, Declarant shall appoint the Directors, each of whom shall serve one year terms, and fill any vacancies on the Board. A t the first: annual meeting after.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Association Bylaws Section XV to strike "who need not be Members of the Association" and replace with: "who must be Members of the Association following termination of the Class B Membership, as mandated by the controlling Declaration."