

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE BOARD & COUNSEL REVIEW

Sec. 5. (p. 4): Open Board Meeting, Action Without Meeting, or Member Governance Defect: Clause authorizes unnotified board meetings or unilateral board action by written/email consent outside open noticed meetings, or unlawfully restricts member governance rights under VA law.

Statutory / Legal Reference: Va. Code § 55.1-1816 (Open Board Meetings & Executive Session)

Statutory Comparison: Under Va. Code § 55.1-1816 (Open Board Meetings & Executive Session), association boards must conduct business in open meetings noticed to the membership and may not dispense with notice or take substantive policy, budget, assessment, or enforcement action by written/email consent outside an open meeting, nor expel members from an appurtenant real-property association or count unreturned proxies as affirmative votes.

CURRENT WORDING IN DOCUMENT:
Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Amend Section 5. to require open noticed board meetings and prohibit board action without a meeting on substantive matters as mandated by Va. Code § 55.1-1816 (Open Board Meetings & Executive Session).

ISSUE #1

Section 2. Term of Office. At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years, and three directors for a term of three years; and at each annual meeting thereafter, the members shall elect three directors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election of the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations must be made from among the members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS
OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly