

OR BK 03178 PG 1039

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

(B) Election and Voting Materials. Candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes at their own expense. Any written materials distributed to the Members by the Association regarding an election shall be non-partisan, and Association funds shall not be used in any Way to promote the election of any candidate over another. No ballot or other election materials used by the Association shall endorse, disparage, or comment on any Candidate or indicate whether a candidate is an incumbent, however the Association shall duplicate and distribute without editing brief resumes of background and qualifications provided by any candidates who would like it distributed. The ballots and all other election and voting materials shall be distributed by the Association with the notice of the annual meeting described in Section 3.5 above.

ISSUE #1

(C) Balloting. Elections shall be by written ballot. The candidate within each Voting Group who receives a plurality of the votes cast shall be elected. The balloting for at-large seats (if any) shall be separate. Each member may cast as many votes as there are Directors to be elected by his Group, but not more than one vote for any candidate. Each member may also cast one vote for each Director to be elected at-large, if any, it being the intent hereof that cumulative voting is prohibited. A member may waive the right of secrecy of his ballot. Election ballots shall be cast by the Members directly with their Neighborhood Association, which shall count the ballots at a Neighborhood Association Board meeting which is properly noticed and open to all owners in the Neighborhood, and deliver the certified results and the ballots to the Secretary of the Association in a sealed envelope, no later than 5:00 p.m. on the day before the election. Any ballots received after the first vote is counted at the Neighborhood Association Board meeting shall be invalid. The sealed envelopes shall not be opened by the Association except as provided below.

(D) Vote Counting. On the day of the annual meeting, before the meeting begins, at a place and time which was stated in the notice of the meeting, the Board (or its designees) shall open the sealed envelopes and count the votes in such manner as it (or they) deem advisable. Any member shall be entitled to attend and observe. The results of the election shall be announced at the beginning of the annual meeting, and the new Directors shall take office at the final adjournment of the meeting. A tie vote shall be broken by agreement between the tied candidates, or, in the absence of agreement, by lot. Any dispute as to the validity of any ballots shall be resolved by the incumbent Board.

4.5 Vacancies on the Board. If the office of any Director or Directors, except those appointed by Declarant, becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors, who shall hold office for the

Sec. 3.5 (p. 9): Corporate Governance, Open Meeting, Director Removal, Election Integrity, or Recordation Defect: Clause violates FL statutory requirements governing open board meetings, email voting, member removal of directors, independent election inspectors, bylaw amendments, or rule recordation.

Statutory / Legal Reference: Fla. Stat. Ch. 617 (Not For Profit Corporation Act); Fla. Stat. Ch. 720 (Homeowners' Association Act)

Statutory Comparison: Under Fla. Stat. Ch. 617 (Not For Profit Corporation Act); Fla. Stat. Ch. 720 (Homeowners' Association Act) and Restatement (Third) of Property (Servitudes) §§ 6.10 - 6.14, associations must conduct board business in open noticed meetings (prohibiting non-emergency email voting or overbroad executive sessions), preserve member rights to remove elected directors with or without cause, appoint independent election inspectors, record rules/amendments where required by state law, and comply with marketable-title covenant renewal statutes.

CURRENT WORDING IN DOCUMENT:

above.
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SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section 3.5 to align board open-meeting and executive-session rules, director removal procedures, special meeting thresholds, proxy/ballot rules, and covenant/rule recordation with Fla. Stat. Ch. 617 (Not For Profit Corporation Act); Fla. Stat. Ch. 720 (Homeowners' Association Act).