

ISSUE #1

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. 15 (p. 5): 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:

El,ectj,oa of Dj,rg,ct;ozs. Election of directors shaff comply wit.h the Condominium Act and, in the absence of specific mandate therein, shaff be conducted in the fol-lowing manner:

- (a) The election of directors shal-1 be held at the annual members' meeting.
- (b) Any unit oliner or other eligible person may serve as a director unless prohibited by the Condominium Act.
- (c) Not less than sixty (60) days before a scheduled the Association shall mail- or deliver to each unj-t owner election, notice of the date of the election. The notice

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section 15 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).

15. **Election of Directors.** Election of directors shall comply with the Condominium Act and, in the absence of specific mandate therein, shall be conducted in the following manner:

(a) The election of directors shall be held at the annual members' meeting.

(b) Any unit owner or other eligible person may serve as a director unless prohibited by the Condominium Act.

(c) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver to each unit owner a first notice of the date of the election. The notice shall advise that any unit owner desiring to be a candidate for the Board may give written notice to the Association not less than forty (40) days prior to the scheduled election and that each candidate may submit an information sheet, no longer than 8 ½ inches by 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

(d) Not less than thirty (30) days prior to the election meeting, the Association shall mail or deliver to each unit owner a second notice of the date of the election, together with a ballot listing all persons who have timely given notice of their candidacy.

(e) The election shall be by secret ballot or voting machine. The owner of each unit shall be entitled to cast a vote for each of as many nominees as there are vacancies to be filled for the directors. There shall be no cumulative voting. In no event shall proxies be used in electing the Board of Directors, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise.

(f) Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least twenty (20%) percent of the eligible voters must cast a ballot in order to have a valid election of members of the Board of Directors. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in §101.051, *Florida Statutes* (as may be amended or superseded), may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the Association in accordance with §718.303, *Florida Statutes* (as may be amended or superseded).