

ISSUE #1

Section 1: [Article III, Section 3.5] Action by Written Ballot Without Meeting

Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Board distributes a ballot and a majority of the ballots returned within five (5) days vote in favor, even if the total number of ballots cast is less than the quorum required for a meeting.

MARKUP #1 ->

Section 2: [Article V, Section 5.8] Director Conflict of Interest Transactions

The Board of Directors may award maintenance or management contracts to a company owned by a sitting Director upon the vote of a simple majority of Directors present, including the vote of the interested Director, without disclosing the financial interest to the membership.

Section 3: [Article VIII, Section 8.4] Annual Financial Statements

Individual Lot Owners shall not have the right to demand or receive copies of the Association's annual balance sheet or revenue and expense statement unless requested by a petition of at least thirty percent (30%) of all Lot Owners.

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. Article III, Section 3.5 (p. 1): Allowing action by written ballot without a meeting when total ballots cast do not meet the meeting quorum requirement violates MCA § 35-2-533.

Statutory / Legal Reference: Mont. Code Ann. § 35-2-533

Statutory Comparison: Under MCA § 35-2-533(3), approval by written ballot pursuant to that section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting.

CURRENT WORDING IN DOCUMENT:

[Article III, Section 3.5] Action by Written Ballot Without Meeting - Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Board distributes a ballot and a majority of the ballots returned within five (5) days vote in favor, even if the total number of ballots cast is less than the quorum required for a meeting.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section Article III, Section 3.5 ([Article III, Section 3.5] Action by Written Ballot Without Meeting - Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Board distributes a ballot and a majority of the ballots returned within five (5) days vote in favor, even if the total number of ballots cast is less than the quorum required for a meeting.) to conform with Mont. Code Ann. § 35-2-533 and the manual attorney audit recommendations for West Winds Master Homeowners' Association, Inc..