

ISSUE #1

**Section 1: [Article IV, Section 5] Quorum for Membership Meetings**

The presence in person or by proxy of five percent (5%) of the Members entitled to vote shall constitute a quorum for the transaction of business at any annual or special meeting of the Members.

MARKUP #1 ->

**Section 2: [Article V, Section 7] Action by Board of Directors Without a Meeting**

Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a simple majority of the Directors consent in writing or by email, without notice to or consent from the remaining Directors.

**Section 3: [Article VI, Section 2] Minimum Number of Directors**

The affairs of the Association may be managed by a Board of Directors consisting of as few as one (1) or two (2) Directors whenever vacancies occur, without requirement to maintain at least three (3) Directors.

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

**Sec. Article IV, Section 5 (p. 1): Setting the membership meeting quorum at 5% violates the statutory 10% minimum quorum floor under the South Dakota Nonprofit Corporation Act.**

**Statutory / Legal Reference: SDCL § 47-23-9**

Statutory Comparison: Under SDCL § 47-23-9, the bylaws may provide the number or percentage of members entitled to vote, represented in person or by proxy, which shall constitute a quorum at a meeting of members, but in the absence of such provision - and as the statutory floor under South Dakota nonprofit law - members holding one-tenth (10%) of the votes entitled to be cast are required to constitute a quorum.

**CURRENT WORDING IN DOCUMENT:**

[Article IV, Section 5] Quorum for Membership Meetings - The presence in person or by proxy of five percent (5%) of the Members entitled to vote shall constitute a quorum for the transaction of business at any annual or special meeting of the Members.

**SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):**

**Amend Section Article IV, Section 5 ([Article IV, Section 5] Quorum for Membership Meetings - The presence in person or by proxy of five percent (5%) of the Members entitled to vote shall constitute a quorum for the transaction of business at any annual or special meeting of the Members.) to conform with SDCL § 47-23-9 and the manual attorney audit recommendations for Red Rock Meadows Homeowners Association, Inc..**