

ISSUE #1

MARKUP #1 ->

HAYDEN LAKES COMMUNITY ASSOCIATION, INC.
QUORUM BYLAW AMENDMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS Hayden Lakes Community Association, Inc., (hereinafter the “ Association”) is a Texas nonprofit corporation and the governing body of Hayden Lakes, Sections 1-11, additions in Harris County, Texas, according to the maps or plats thereof, recorded in the Map Records of Harris County, Texas, under Clerk’ s File Nos. 20140383189, 20140383190, 20140383191, 20150035841, 20150035842, 20150008739, 20150362211, 20150387177, 20150469728, 20150420670, and RP 2017 447477, respectively, along with any replats thereto and along with any other real property brought under the Association’ s jurisdiction (hereinafter the “Subdivision”); and,

WHEREAS the Association is governed by the Bylaws of the Hayden Lakes Community Association, Inc., recorded in the Real Property Records of Harris County, Texas, under Document No. 20140449418, along with any amendments thereto (hereinafter the “ Bylaws”); and,

WHEREAS Section 22.102(c) of the Texas Business Organizations Code provides that a nonprofit corporation’s board of directors may amend the nonprofit corporation’s bylaws unless: the corporation’s formation document wholly or partly reserves that power exclusively to the corporation’s members; or, the management of the corporation is vested in the corporation’s members; or, if in amending, repealing, or adopting a bylaw, the corporation’s members expressly provided that the board of directors may not amend or repeal the bylaw; and,

WHEREAS the Association’s Articles of Incorporation do not wholly or partly reserve the power to amend the Bylaws exclusively to the Association’s members; and,

WHEREAS the management of the Association is vested in the Association’s board of directors, and not in the Association’s members; and,

WHEREAS in amending, repealing, or adopting the bylaws, the Association’s members have never expressly provided that the board of directors may not amend or repeal such bylaws; and,

WHEREAS there is a need to amend the Bylaws regarding quorum, so as to better serve the Association’s purposes by providing for and facilitating the holding of meetings of the Association’s Members; and,

WHEREAS this Quorum Bylaw Amendment replaces, repeals, and overrules, any other conflicting, prior, or existing amendment to the Bylaws, concerning the same subject matter (i.e., quorum for meetings of the Members); and,

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

Sec. N/A (p. 1): Enforcement/fining provision omits mandatory Texas Property Code § 209.006 certified mail notice, 30-day Board hearing request window, or HB 614 recorded fine schedule requirements.

Statutory / Legal Reference: Tex. Prop. Code § 209.006, § 209.0061 & § 209.007
Statutory Comparison: Under Tex. Prop. Code § 209.006 and § 209.007, an association may not levy a fine or suspend an owner's right to use a common area unless it first gives written notice by certified mail describing the violation, providing a reasonable period to cure (if curable and not a repeat violation within 6 months), and stating that the owner may request a hearing before the Board on or before the 30th day after the notice was mailed. Further, under § 209.0061 (HB 614), the association must maintain and provide a recorded enforcement policy specifying general categories of restrictive covenants and a schedule of fines for each category.

CURRENT WORDING IN DOCUMENT:
HAYDEN LAKES COMMUNITY ASSOCIATION, INC. QUORUM BYLAW AMENDMENT
STATE OF TEXAS COUNTY OF HARRIS § § WHEREAS Hayden Lakes Community Association, Inc., (hereinafter the " Association") is a Texas nonprofit corporation and the governing body of Hayden Lakes, Sections 1-11, additions in Harris County, Texas, according to the maps or plats thereof, recorded in the Map Records of Harris County, Texas, under Clerk' s File Nos. 20140383189, 20140383190, 20140383191, 20150035841, 20150035842, 20150008739, 20150362211, 20150387177, 201504697

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Before the Association levies a fine, suspends an Owner's right to use a common area, or files suit other than to collect regular or special assessments or foreclose a lien, the Association shall give written notice to the Owner by certified mail in compliance with Tex. Prop. Code § 209.006. The notice must describe the violation, include a copy of or link to the Association's recorded enforcement and fine schedule policy required by Tex. Prop. Code § 209.0061 (HB 614), specify a reasonable cure period (for curable violations), and inform the Owner that they have thirty (30) days from the date notice is mailed to submit a written request for a hearing before the Board pursuant to Tex. Prop. Code § 209.007.