

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

- (vi) requiring an Owner, at the Owner's expense, to remove a structure or improvement on that Owner's Lot in violation of this Article 4 and to restore the Lot to its previous condition and, on failure of the Owner to do so, the Board or the Board's designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and such actions shall not be deemed a trespass;
- (vii) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 4 from continuing or performing any further activities in the Subdivision;
- (viii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and
- (ix) limit in any given Year, the number of Rentals available to Renters within the Subdivision and establish this limit in the Use Restrictions and Rules.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.24 of the Bylaws; exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

ISSUE #1

~~In addition to any other enforcement rights, if an Owner fails properly to perform that~~
Owner's maintenance responsibilities, the Association may Record a notice of violation or perform the maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency, determined in the sole discretion of the Board, the Board will provide the Owner with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, the Association shall be entitled to recover all costs, including, without limitation, attorneys' fees, and court costs, incurred in such action.

The Association shall not be obligated to take any action if the Board reasonably determines that the Association's position is not strong enough to justify taking such action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision later under other circumstances or stop the Association from enforcing any other covenant, restriction, or rule.

The Association, by agreement, may, but shall not be obligated to, enforce applicable city and county ordinances, and will always permit the City of Bentonville to enforce ordinances within the Subdivision for the benefit of the Association and the Members.

Sec. 3.24 (p. 30): Clause denies or restricts owner inspection of association books, financial statements, budgets, or corporate records in violation of Ark. Code Ann. §§ 4-33-1601 to 4-33-1605 & § 18-13-110.

Statutory / Legal Reference: Ark. Code Ann. §§ 4-33-1601 to 4-33-1605 & § 18-13-110

Statutory Comparison: Under Ark. Code Ann. § 18-13-110, the administrator or board of administration must keep a book with a detailed account in chronological order of the receipts and expenditures affecting the property and its administration, and both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the co-owners at convenient hours on working days. Furthermore, under the Arkansas Nonprofit Corporation Act (Ark. Code Ann. §§ 4-33-1601 to 4-33-1605), a member is entitled to inspect and copy corporate and financial records upon at least five (5) business days' written demand, and under § 4-33-1602(e), a corporation may not abolish or limit a member's statutory inspection rights in its articles or bylaws.

CURRENT WORDING IN DOCUMENT:

Owner's maintenance responsibilities, the Association may Record a notice of violation or perform the maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency, determined in the sole discretion of the Board, the Board will provide the Owner with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Ark. Code Ann. §§ 4-33-1601 to 4-33-1605 & § 18-13-110, the Association shall maintain detailed chronological books of all receipts, expenditures, and supporting vouchers open for examination by all Owners on working days, and any Member or their authorized agent or attorney may inspect and copy corporate and financial records upon at least five (5) business days' prior written notice.