ISSUE #1

Section 19 - Sample Provision Excerpt (Public Preview)

Fences, Flag Poles, Tree Houses. No fences or other enclosure of part of any building of any type or nature whatsoever shall ever be constructed, erected, placed or maintained closer to the front lot line than the building setback line applicable and in effect as to each lot, provided, however, that chain link or similar fences are in all events strictly prohibited and shall not be used under any circumstances; provided, further, that it is not the intentions of this paragraph to exclude the use of evergreens or other shrubbery to landscape the front yard. Fencing of any type must be approved by the Architectural Control Committee as provided in paragraph 2 hereof. No flagpoles or tree houses may be erected or installed on any lot.

MARKUP #1 ->

MARKUP #1 · CONDITIONAL OUTCOME — FACT-DEPENDENT CHECK

Sec. 19 (p. 8): Conditional counsel review: lot flagpole prohibition restricts erecting flagpoles on a lot, and the supplied record does not establish whether the association applies it to prevent respectful bracket, staff, or window display of the United States flag under Pub. L. 109-243 §§ 3 - 4 and Ark. Code Ann. § 14-1-203.

Statutory / Legal Reference: Pub. L. 109-243, §§ 3 - 4 (4 U.S.C. § 5 Note); Ark. Code Ann. §§ 14-1-201 to 14-1-204 (Act 1106 of 2003, § 3)

Statutory Comparison: Under the Freedom to Display the American Flag Act of 2005 (Pub. L. 109-243, § 3, 4 U.S.C. § 5 Note) and Arkansas Act 1106 of 2003, § 3 (Ark. Code Ann. §§ 14-1-201 to 14-1-204), an association may not prevent an owner from properly displaying a United States flag (fabric, cloth, or paper up to 10 ft 8 ft under § 14-1-201; prevailing-party fee-shifting under § 14-1-204) on exclusive-use residential property. However, Pub. L. 109-243 § 4 preserves reasonable time, place, and manner restrictions necessary to protect a substantial association interest, and Ark. Code Ann. § 14-1-203 (which also exempts advertising displays, <12-unit rental landlords, and religious-organization property) does not mandate permanent freestanding yard masts. Because this covenant prohibits erecting "flagpoles" on any lot without addressing house-mounted brackets, porch staffs, or window display, a statutory violation would be established only if architectural rules or enforcement records show the association bars all exterior U.S. flag display methods or leaves no reasonable residential display manner.

CURRENT WORDING IN DOCUMENT:

Fences, Flag Poles, Tree Houses. No fences or other enclosure of part of any building of any type or nature whatsoever shall ever be constructed, erected, placed or maintained closer to the front lot line than the building setback line applicable and in effect as to each lot, provided, however, that chain link or similar fences are in all events strictly prohibited and shall not be used under any circumstances; provided, further, that it is not the intentions of this paragraph to exclude the use of evergreens or other shrubbery to landscape the front yard. Fencing of any type must be approved by the Architectural Control Committee as provided in paragraph 2 hereof. No flagpoles or tree houses may be erected or installed on any lot.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Confirm with Arkansas counsel and the Architectural Control Committee that restricting lot-erected flagpoles applies only to permanent freestanding yard masts and does not prevent an Owner from properly displaying the flag of the United States from a residential wall bracket, porch staff, or window pursuant to Pub. L. 109-243 §§ 3 - 4 (4 U.S.C. § 5 Note) and Ark. Code Ann. §§ 14-1-201 to 14-1-204.