

MARKUP #1 ->

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

3.5.4.1 Notice and Opportunity to Be Heard. The accused Owner shall be given notice and an opportunity to be heard with respect to the alleged violation in accordance with the provisions of the California Corporations Code and of the California Civil Code.

3.5.4.2 Limitation on Suspensions. Any suspension of an Owner's Association privileges shall not exceed 60 days for each violation.

ISSUE #1

Limitation on Monetary Fines. Any monetary fine shall not exceed \$250.00 for each violation.

3.5.4.4 No Abridgement. Except as provided in Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court, a decision arising out of arbitration or an agreement reached through mediation, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Lot.

3.5.5 Right of Entry After Notice. The Association's agents or employees shall have the right to enter any Lot when necessary in connection with any repair work for which the Association is responsible. This entry shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

3.6 Duties of the Association. In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Instruments, the Association shall be responsible for the following:

3.6.1 Maintenance of Common Area and Limited Use Common Area. The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, and the Limited Use Common Area, and, in addition, maintain and repair, or contract for the performance of that work, those portions of the Development which are the responsibility of the Association. The Association shall also have the exclusive right and duty to acquire and maintain any landscaping, furnishings and equipment for the Common Area and Limited Use Common Area that it determines are necessary and proper. The Association shall maintain the sidewalks that are the property of the Association.

3.6.2 Use of Assessments. The Association shall use the assessments provided for herein to pay all charges legally incurred by the Association.

3.6.3 Annual Budget. The Association shall prepare a pro forma operating budget for each fiscal year and shall distribute a copy of the budget to each Owner not less than 45 and not more than 60 days before the beginning of the fiscal year. As an alternative to the foregoing distribution of the budget, the Association may elect to do all of the following in the manner required by statute: distribute a summary of the budget to each Owner, make the budget available for inspection at a

Sec. 3.5.4.3 (p. 15): Disciplinary fine provision conflicts with California AB 130 (Cal. Civ. Code §§ 5850(c)-(e) & 5855) by authorizing non-health/safety fines exceeding \$100 per violation, imposing interest or late fees on unpaid fines, or denying the mandatory pre-hearing cure right.

Statutory / Legal Reference: Cal. Civ. Code §§ 5850(c)-(e) & 5855 (AB 130, enacted June 30, 2025)

Statutory Comparison: Under California Civil Code §§ 5850(c)-(e) and 5855 (as amended by AB 130, effective June 30, 2025), an association shall not impose a monetary penalty exceeding \$100 per violation unless the violation may result in an adverse health or safety impact on the common area or another member's property and the board makes a written finding specifying that adverse impact in an open meeting. Furthermore, AB 130 prohibits charging late fees or interest on unpaid monetary penalties and bars imposing a discipline if the member cures the violation prior to the board hearing (or within a reasonable cure period if curing takes longer than the notice period).

CURRENT WORDING IN DOCUMENT:

Limitation on Monetary Fines. Any monetary fine shall not exceed \$250.00 for each violation.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to California Civil Code §§ 5850(c)-(e) and 5855 (AB 130), no monetary penalty for a governing document violation shall exceed One Hundred Dollars (\$100.00) per violation unless the Board makes a written finding in an open meeting that the violation results in an adverse health or safety impact. No late fee or interest shall be charged on any unpaid monetary penalty, and no fine shall be imposed if the member cures the violation prior to the disciplinary hearing (or provides a financial commitment to cure where cure requires more time than the hearing notice period).