that event Declarant may require, of the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of one third of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as proved above, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon termination of the period of Declarant's control. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held of controlled by Declarant, including without limitation those items specified in Section 303(9) of the Common Interest Act.

Section 9. Officers of the Association. The officers of this Association shall be as set forth in the Bylaws of the Association.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 10. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for private road and /or driveway, to be established and collected as hereinafter provided. The annual assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and lot thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

ISSUE #1

MARKUP #1 ->

MARKUP #1 · POTENTIAL STATUTE CONFLICT — BOARD & COUNSEL REVIEW

Sec. 10. (p. 3): Enforcement, fining, interest, or foreclosure provision violates Colorado HB 22-1137 (C.R.S. § 38-33.3-209.5) limits on cure periods, $500 fine cap, 8% interest cap, or prohibition on foreclosing fine liens.

Statutory / Legal Reference: C.R.S. § 38-33.3-209.5 & 38-33.3-316 (HB 22-1137)

Statutory Comparison: Under C.R.S. § 38-33.3-209.5 (as amended by HB 22-1137), for covenant violations that do not threaten public health or safety, the association must: (1) notify the unit owner by certified mail, return receipt requested; (2) grant two consecutive 30-day periods to cure before turning the matter over to an attorney or legal action; (3) cap total fines for a particular covenant violation at $500; (4) cap delinquency interest at 8% per annum; and (5) refrain from foreclosing on any assessment lien consisting solely of fines, fees, or collection costs. Note for review: also look for any subsequent recorded amendment or standalone Fining/Enforcement Policy not included in the uploaded documents that may already supersede or cure this provision.

CURRENT WORDING IN DOCUMENT:

reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to C.R.S. §§ 38-33.3-209.5 and 38-33.3-316 (HB 22-1137), for any covenant violation that does not threaten public health or safety: (a) the Association shall send written notice via certified mail, return receipt requested, providing the owner two (2) consecutive thirty (30) day cure periods; (b) the total amount of fines imposed for any single non-health/safety violation shall not exceed Five Hundred Dollars ($500.00); (c) delinquent assessments shall bear interest at no more than eight percent (8%) per annum; and (d) the Association shall not foreclose an assessment lien consisting solely of fines, collection costs, or attorney fees.