

PROPERTY RIGHTS IN THE COMMON AREA

Section 6.1. Owner’s Easements of Enjoyment. Subject to the provisions of Section 6.2 of this Article, every Owner, other than the Owners of Private Open Space and Church sites, shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot and Dwelling Unit.

Section 6.2. Extent of Owners’ Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with the written consent of the Members entitled to vote two-thirds (2/3) of the votes of each class of membership and 100% of all first mortgagees, to mortgage said property as security for any such loan; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area; and

~~(d) The rights of the Association , as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any Assessment against his Lot or Dwelling Unit remains unpaid, and for any infraction of its published rules and regulations; and~~

~~(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility or private party for such purposes and subject to such conditions as may be approved by the Board of Directors of the Association; and~~

(f) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area; and

(g) The right of the Association to lease portions of the Common Area to others.

Section 6.3. Delegation of Use. Any Owner may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot or in his Dwelling Unit.

Section 6.4. Payment of Taxes or Insurance by Mortgagees. First mortgagees of Lots and/or Dwelling Units shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may become a lien against the

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

**Sec. 6.2. (p. 14): Voting rights suspension clause lacks Colorado statutory notice, hearing due process, or delinquency safeguards (C.R.S. § 38-33.3-209.5 (HB 22-1137 \$500 Non-Health/Safety Cap & Cure Notice)).**

**Statutory / Legal Reference: C.R.S. § 38-33.3-209.5 (HB 22-1137 \$500 Non-Health/Safety Cap & Cure Notice); Colo. Rev. Stat. §§ 38-33.3-101 to 38-33.3-402 (CCIOA); Colo. Rev. Stat. §§ 7-121-101 to 7-137-301 (Colorado Revised Nonprofit...**

Statutory Comparison: Under Colorado community association and nonprofit corporation statutes (C.R.S. § 38-33.3-209.5 (HB 22-1137 \$500 Non-Health/Safety Cap & Cure Notice); Colo. Rev. Stat. §§ 7-121-101 to 7-137-301 (Colorado Revised Nonprofit Corp. Act)), member voting rights are a fundamental corporate governance right and may not be summarily suspended without strict compliance with statutory delinquency thresholds, prior written notice, and an opportunity to be heard.

**CURRENT WORDING IN DOCUMENT:**

suspend the voting rights of a Member for any period during which any Assessment against his Lot or Dwelling Unit remains unpaid, and for any infraction of its published rules and regulations; and

**SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):**

**Provided that any suspension of voting or membership privileges (to the extent permitted by Colorado law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with C.R.S. § 38-33.3-209.5 (HB 22-1137 \$500 Non-Health/Safety Cap & Cure Notice) and Colo. Rev. Stat. §§ 7-121-101 to 7-137-301 (Colorado Revised Nonprofit Corp. Act).**

ISSUE #1