

MARKUP #1 ->

MARKUP #1 · OUTDATED STATUTE LOCK

BOARD & COUNSEL REVIEW

9.3 Binding Effect. The terms of this AGREEMENT are binding upon and inure to the benefit of, and are enforceable by, the respective successors and assigns of the parties.

9.4 Severability. The invalidity or unenforceability of any particular provision of this AGREEMENT cannot affect the other provisions hereof and this AGREEMENT must be construed in all respects as if such invalid or unenforceable provision were omitted.

9.5 Incorporation by Reference. The exhibits and schedules referred to in this AGREEMENT and attached hereto are hereby incorporated into this AGREEMENT by reference.

9.6 Recording. This AGREEMENT must be recorded in the Public Records of Palm Beach County, Florida.

9.7 Attorney's Fees and Enforcement. In the event that any party on the MAINTENANCE ASSOCIATION commences legal proceeding to enforce this AGREEMENT, the prevailing party is entitled to receive reasonable attorneys' fees and all costs incurred in connection with such enforcement, including fees and costs of appeal, from the losing party. ASHFORD and ASHFORD GREEN agree to cooperate with the MAINTENANCE ASSOCIATION in enforcing the terms and conditions of this AGREEMENT and the MAINTENANCE GOVERNING DOCUMENTS including its rules and regulations against their respective owners/residents. Such cooperation includes but is not limited to suspending or fining such owner/residents, their respective guests or invitees in accordance with Chapter 720, Florida Statutes, as amended, including any successor or replacement statute (collectively, "CHAPTER 720"), if so directed by the BOARD. The amount of any proposed fine or duration of any suspension is recommended by the BOARD for the MAINTENANCE ASSOCIATION and must comply with the limitations set forth in CHAPTER 720. The MAINTENANCE ASSOCIATION must cooperate with ASHFORD and/or ASHFORD GREEN in the implementation and enforcement of any suspension imposed by ASHFORD and/or ASHFORD GREEN against their respective owners/residents and/or their guests and invitees.

9.8 In any legal proceedings arising out of this AGREEMENT, same must be resolved in an appropriate forum in Palm Beach County, Florida, and the parties hereby waive venue outside of said County.

IN WITNESS WHEREOF, the undersigned have executed this AGREEMENT this 23rd day of July, 2018.

Sec. 9.7 (p. 8): Declaration references Florida Statutes without express Kaufman language ("as amended from time to time"), risking unconstitutional impairment of contract challenges upon statutory changes.

Statutory / Legal Reference: Kaufman v. Shere, 347 So. 2d 627 (Fla. 3d DCA 1977); Cohn v. Grand Condo. Ass'n, 62 So. 3d 1120 (Fla. 2011)

Statutory Comparison: Under Florida Supreme Court precedent (Cohn), legislative amendments that impair vested contract rights cannot be applied retroactively to an existing community unless the Declaration contains express language adopting the statute "as amended from time to time" (the Kaufman doctrine).

CURRENT WORDING IN DOCUMENT:

such owner/residents, their respective guests or invitees in accordance with Chapter 720, Florida Statutes, as amended, including any successor or replacement statute (collectively, "CHAPTER 720"), if so directed by the BOARD. The amount of any proposed fine or duration of any suspension is recommended by the BOARD for the MAINTENANCE ASSOCIATION and must comply with the limitations set forth in CHAPTER 720.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

In accordance with Kaufman v. Shere, amend the governing law clause to read: "...governed by Chapter 718 [or 720], Florida Statutes, as the same exists on the date hereof and as the same may be amended from time to time."

ISSUE #1