ISSUE #1

violations, but in no event shall any fine exceed the maximum amount allowed by law or $5,000.00, whichever is greater. Suspensions of the use of common areas and facilities may be imposed for a reasonable period of time to deter future violations. A Suspension cannot be imposed to prevent access or utility services to the parcel. The procedure for imposing fines and/or suspensions shall be as follows:

(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for hearing before the Board of Directors after reasonable notice of not less than fourteen (14) days, and the notice shall include:

(1) A statement of the date, time and place of the hearing;

(2) A specific designation of the provisions of Chapter 720, Florida Statutes, the governing documents or the rules which are alleged to have been violated;

(3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and

(4) The possible amounts of any proposed fine and/or possible use rights of common areas or facilities to be suspended.

(B) Hearing: At the hearing the party against whom the fine and/or suspension may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before the Board of Directors and shall be confirmed or rejected by a Committee formed for the sole purpose to confirm or reject the fine levied by the Board. None of the Committee members may then be serving as Directors or officers or be employees of the Association, or the spouse or non-spouse companion, parent, child, brother or sister of an officer, director or employee of a Board member. If the Committee, by majority vote, does not agree with the fine, and/or suspension, it may not be levied. If the committee agrees with the fine, and/or suspension, the Board of Directors shall levy same.

8.2 Correction of Health and Safety Hazards. Any violations of Association rules which create conditions of the property which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the unit owner.

8.3 Mandatory Mediation. In the event of any dispute as defined in Section 720.311, Florida Statutes, between a residential unit owner and the Association arising from the operation of the Community, the parties must submit the dispute to mandatory mediation. Nothing herein shall be construed to require mediation of disputes related to the levy or collection of fees or assessments.

8.4 Availability of Remedies. Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the right of the majority to enjoy the property free from unreasonable disruptions and annoyance.

MARKUP #1 ->

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

Sec. COMPLIANCE (p. 12): Governing document provides for covenant fining or suspension hearings to be conducted before the Board of Directors itself rather than an independent fining committee of non-Board members, violating Fla. Stat. § 720.305(2)(b).

Statutory / Legal Reference: Fla. Stat. § 720.305(2)(b)

Statutory Comparison: Under Fla. Stat. § 720.305(2)(b), the Board of Directors may levy a proposed fine or suspension, but the mandatory 14-day due-process hearing must be held before an independent committee of at least three (3) members who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the independent committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed.

CURRENT WORDING IN DOCUMENT:

AND DEFAULT: REMEDIES. In addition to the remiedies provided in of i the Fourth Amended and Restated Declaration of. Covenants, Conditions, Restrictions and Easements for Berkshire Lakes the following shall'apply: .BYLAWS EXHIBIT "" OR 5298 PG IG6 violations, but in no event shall any fine exceed the maximum amount allowed by law or $5,000.00, utility services to the parcel.
(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for. hearing before the Board of

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. § 720.305(2)(b), any fine or suspension levied by the Board of Directors requires at least fourteen (14) days' written notice to the Owner and occupant of a hearing before an independent Fining Committee of at least three (3) Members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the Committee does not approve the proposed fine or suspension by majority vote, it may not be imposed.