



MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 5.20 (p. 31): Outdated reserve waiver clause contradicts mandatory post-milestone SIRS requirements.

Statutory / Legal Reference: Fla. Stat. § 718.112(2)(f) (HB 1021)

Statutory Comparison: Effective under HB 1021, condominium and cooperative associations cannot waive or reduce reserves for items required by a Structural Integrity Reserve Study (SIRS), nor use structural reserve funds for non-scheduled purposes without statutory exemptions.

CURRENT WORDING IN DOCUMENT:

include any reserves for replacement, operating howev-r, i reserves, depreciation reserveS, capital eKpenditures or Special Assessments for compliance, services or improvement. D-clarant may at any time give written notice to the 1 l The M-ster Association that it is withdraWing its obligation to fund such Deficiency, effective not sooner th-n srx-- (GO) day6 aftr such notice whereupon, Declarant shall waive its right to exclusion from Regular and Specia- Assessments.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided, however, that reserve funding for components covered by a Structural Integrity Reserve Study (SIRS) pursuant to Fla. Stat. § 718.112(2)(g) cannot be waived, reduced, or used for any purpose other than their designated structural replacement.

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Component Association shall specifically agree to do so.

5.20 Declarant Assessment. Notwithstanding any provi-  
sions of this Master Declaration or the Articles or By-Laws to  
the contrary, so long as there is a Declarant membership status  
Declarant shall not be obligated for nor subject to any Regular  
Assessment for any Unit or Parcel which it may own, nor shall it  
be responsible for any Special Assessment except those to which  
Declarant shall consent in writing. Provided, however, that  
Declarant shall be responsible for paying the difference between  
the Master Association's expenses of operation otherwise to be

funded by Regular and Special Assessments and the amount received  
from Owners other than Declarant in payment of the Regular and  
Special Assessments levied against such Owner's Units and  
Parcels. Such difference, herein called the "Deficiency," shall  
not, however, include any reserves for replacement, operating  
reserves, depreciation reserves, capital expenditures or Special  
Assessments for compliance, services or improvement. The  
Declarant may at any time give written notice to the Master  
Association that it is withdrawing its obligation to fund such  
Deficiency, effective not sooner than SIXTY (60) days after such  
notice whereupon, Declarant shall waive its right to exclusion  
from Regular and Special Assessments. Upon the giving such  
notice or upon termination of Declarant membership, whichever  
first occurs, each Unit or parcel owned by Declarant shall  
thereafter be assessed at TWENTY-FIVE PERCENT (25%) of the  
Regular and Special Assessment level established for Units and  
Parcels owned by Regular Members other than the Declarant.  
Provided, however, Declarant shall not be responsible for any  
reserve for replacements, operating reserves, depreciation reser-  
ves, capital expenditures or Special Assessments for compliance,  
Services or Improvements not consented to by Declarant. All such  
assessments shall be prorated for the remaining months of the

then current fiscal year, if applicable. Declarant's assessment  
shall be only for those Units and Parcels subject to this Master  
Declaration. Upon transfer of title of a Unit or Parcel owned by  
Declarant, the Unit or Parcel shall then be assessed in the  
amount otherwise established for Units or Parcels owned by Owners

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