



MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

for the remaining portion of the calendar year for which the amended assessment is made shall be due on the first day of the month next preceding the month in which the amended assessment is made, or as otherwise provided by the Board.

6.9 Special Assessments: Special assessments for common expenses for improvements or for services or repairs that cannot be paid from the annual assessments for common expenses shall be made only after notice of the need for such is given to the unit owners as provided in this Article. After such notice and upon approval in writing by persons entitled to cast more than one-half (1/2) of the votes of the unit owners, the assessment shall become effective, and it shall be due in the manner as the Board may require in the Notice of Assessment. Notwithstanding the foregoing, approval of the membership shall not be required as described above in emergencies or in instances where the Association has an overriding statutory or fiduciary duty to protect, maintain, repair, or replace a particular existing common element in accordance with its duties pursuant to the Condominium Act. The notice for any Board meeting in which a special assessment will be considered shall be given by written notice of the meeting along with an agenda mailed or hand delivered to each unit owner at least fourteen (14) days and no more than sixty (60) days before the meeting.

ISSUE #1

6.10 Acceleration of Assessments: If a unit owner shall be in default in the payment of an assessment installment for more than thirty (30) days, the Board may accelerate the remaining installments of the assessment upon notice to the unit owner, and then the total unpaid balance of the annual assessment shall come due and payable upon the date stated in the notice.

6.11 Lien for Assessments and Collection: The Association shall have a lien against each unit for any unpaid assessments, interest, late fees, costs, and attorneys' fees, with respect thereto, as provided in the Condominium Act, as amended, and the Association's governing documents. Assessments and installments on them not paid when due shall bear interest up to the highest amount allowed by the Condominium Act, as determined by the Board, from the date due until the date paid. The lien shall be effective from and after recording a claim of lien in the Public Records of Sarasota County, Florida, stating the description of the unit, the name of the record owner, the amount due and the due date. The Association may bring an action in its name to foreclose a lien for assessments unpaid in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. If a member shall fail to pay any assessment, or part of it, when due, the Board shall mail notice of default to the member and shall have the authority to turn the collection matter over to the Association's attorney. Upon providing notice of intent to foreclose as required by the Condominium Act, the Board may initiate foreclosure proceedings to recover all unpaid assessments, costs, administrative late fees, interest and attorneys' fees. The Association may bid on the unit at the foreclosure sale and may acquire and hold, lease, mortgage and convey the same.

6.12 Financial Reporting: Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report of the Association's accounts for the preceding fiscal year, pursuant to the provisions of the Condominium Act. Within twenty-one (21) days after the financial report is completed by the Association, or received from the third party preparing the report, but not later than one hundred twenty (120) days after the end of the fiscal year, the

Sec. 6.10 (p. 13): Bylaw provision purports to make accelerated annual assessment installments due upon 5 days' personal delivery or 10 days' certified mail notice and omits mandatory 30-day Notice of Late Assessment and 45-day Notice of Intent to Record a Claim of Lien required by Fla. Stat. §§ 718.112(2)(g) and 718.121(5)-(6).

Statutory / Legal Reference: Fla. Stat. § 718.112(2)(g), 718.121(5)-(6)

Statutory Comparison: Under Fla. Stat. § 718.112(2)(g), a condominium association may accelerate assessments of an owner delinquent in payment of common expenses only as provided in the bylaws, and "accelerated assessments shall be due and payable on the date the claim of lien is filed." Furthermore, under Fla. Stat. § 718.121(5)-(6), no claim of lien may be recorded until the association first delivers a 30-day free Notice of Late Assessment followed by a 45-day written Notice of Intent to Record a Claim of Lien. Making accelerated assessments due 5 days after personal delivery or 10 days after certified mailing without complying with the 30-day + 45-day statutory pre-lien sequence conflicts with Chapter 718.

CURRENT WORDING IN DOCUMENT:

Acceleration of Assessments: If a unit owner shall be in default in the payment of an assessment installment for more than thirty (30) days, the Board may accelerate the remaining installments of the assessment upon notice to the unit owner, and then the total unpaid balance of the annual assessment shall come due and payable upon the date stated in the notice.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. §§ 718.112(2)(g) and 718.121(5)-(6), accelerated assessment installments shall become due and payable only upon the date a Claim of Lien is validly recorded in the Public Records of Miami-Dade County following delivery of the mandatory 30-day Notice of Late Assessment and 45-day Notice of Intent to Record a Claim of Lien.