



reasonably to be inferred therefrom.

ISSUE #1

6.2 Enforcement and Fines: The Board of Directors shall enforce by legal means, provisions of the Condominium Act, Declaration of Condominium, the Articles of Incorporation, the By-Laws and Rules and Regulations. In the event that the Board of Directors determines that any unit owner, occupant or guest is in violation of any of the provisions of the Condominium Act, the Declaration, By-Laws, Articles or Rules and Regulations, the Board, or an agent or committee of the Board designated for that purpose, shall notify the unit owner of the nature of the violation, and the owner of the unit which that person occupies, or is a guest, if that person is not the owner, of the specific nature of the alleged violation, including statements setting forth the provisions of the condominium documents allegedly violated and a short and plain statement of the matters asserted by the Association, and advising of an opportunity for a hearing before the Board of Directors upon a written request delivered to the Board member or designated agent within 14-days of the date of the notice of the violation or violations. The Board notice shall state the date, time and place of the hearing to be held if the hearing is requested. The Board notice shall also specify, and is hereby provided, that each reoccurrence of the violation or each day during which the violation continues shall be deemed a separate offense, subject to a separate fine, not to exceed \$50. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Board of Directors. Subsequent to the hearing, or if no hearing is timely requested, the Board of Directors shall determine whether there is sufficient evidence of a violation or violations. If the Board determines that there is sufficient evidence to support a fine, the Board may levy a fine and shall send written notification to the violator, and the unit owner if different than the violator, announcing its findings and notifying of the levy of a fine or fines. No further notice or hearings shall be necessary to enable the Board to levy a fine for an uncorrected violation, or for recurring violations substantially similar to violations for which a hearing opportunity was previously provided. A fine pursuant to this section shall be assessed against the unit which the violator occupied or was visiting at the time of the violation, whether or not the violator is an owner of that unit, and shall be promptly paid to the Association by the owner of that unit. The owner shall be liable for attorneys fees and costs incurred by the Association incident to the levy or collection of the fines, including appellate proceedings.

6.3 Budget and Assessments: To adopt budgets and make assessments, and to use and expend assessments and other receipts of the Association to carry out the powers and duties of the Association pursuant to the Declaration, By-Laws and Condominium Act.

6.4 Employment: To employ, dismiss, control and contract for personnel and contractors for the administration of the Association and operation of the Condominium, including but not limited to managers, maintenance personnel, attorneys, accountants and other professionals, by employment or contract, as the Board may determine.

6.5 Rules and Regulations: To adopt, amend and rescind reasonable rules and regulations relating to the administration of the Association and operation and use of the Condominium Property, subject to the Declaration, By-Laws and Condominium Act. Provided, however, that any rules or regulations adopted by the Board may be supplemented, amended or rescinded by affirmative vote of the owners of not less than two-thirds (2/3) of the units in the Condominium. Any such rules or regulations

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 6.2 (p. 8): 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. § 718.303(3)(b).

Statutory / Legal Reference: Fla. Stat. § 718.303(3)(b)

Statutory Comparison: Under Fla. Stat. § 718.303(3)(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:

agent or committee of the Board designated for shall notify the unit owner of the nature of the violaand the owner of the unit which that person occupies, or if that person is not the owner, of the specific nature

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. § 718.303(3)(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.