

ISSUE #1

MARKUP #1 ->

Section 1: [Amended Rules and Regulations, Schedule of Fines Section IV] Schedule of Fines for Unauthorized Tree C

The Board of Directors has established a Schedule of Fines under which unauthorized cutting or topping of trees on a Property Owner's Lot or Common Property is subject to an immediate fine of up to \$2,500.00 per tree plus mandatory replanting costs, with fines doubling for any repeat offense by the same Property Owner or contractor.



MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 1 (p. 1): Clause permits fining, privilege suspension, or utility termination without express recorded instrument authorization or mandatory written notice and opportunity to be heard under O.C.G.A. § 14-3-621 & common-law servitude principles.

Statutory / Legal Reference: O.C.G.A. § 14-3-621 & § 14-3-101 et seq. (Georgia Nonprofit Corporation Code - Non-POAA Common-Law HOA; cf. O.C.G.A. § 44-3-222)

Statutory Comparison: Under O.C.G.A. § 44-3-223, every owner and occupant must comply with the recorded instrument, bylaws, and rules and regulations, and the association is empowered to impose fines or suspend voting rights or rights to use common areas only "to the extent provided in the instrument." Board-adopted rules cannot independently create fining power where the recorded Declaration does not authorize fines, and Georgia law requires reasonable prior written notice of the alleged violation and an opportunity to be heard before a fine or suspension becomes final (and utility termination under O.C.G.A. § 44-3-223 / § 44-3-76 requires strict compliance with final judgment and utility notice procedures). (Note: Because this Declaration does not contain an affirmative submission to the Georgia Property Owners' Association Act under O.C.G.A. § 44-3-222, statutory POAA liens and powers do not apply unless opted in by recorded amendment; governance and suspension authority are controlled by the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 et seq., and common-law servitude principles.)

CURRENT WORDING IN DOCUMENT:

[Amended Rules and Regulations, Schedule of Fines Section IV] Schedule of Fines for Unauthorized Tree Cu The Board of Directors has established a Schedule of Fines under which unauthorized cutting or topping of trees on a Property Owner's Lot or Common Property is subject to an immediate fine of up to \$2,500.00 per tree plus mandatory replanting costs, with fines doubling for any repeat offense by the same Property Owner or contractor.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to O.C.G.A. § 44-3-223, the Board of Directors may impose reasonable fines or suspend an Owner's right to vote or use Common Areas only as expressly authorized by the recorded Declaration. Prior to imposing any fine or suspension for a non-monetary covenant violation, the Association shall provide the Owner at least ten (10) days' written notice specifying the alleged violation, the proposed sanction, and the opportunity to request a hearing before the Board of Directors.