ISSUE #1

Section 8.1(b) - Sample Provision Excerpt (Public Preview)

Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum), late charges (in an amount equal to the greater of Ten and No/100 Dollars (S10.00) or ten percent(10%) of the assessment or installment not paid when due), costs of collection, and reasonable attorneys' fees actually incurred, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon the transfer or Deed Book I 53 "2 Ps 4305
conveyance of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the transfer or conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any other purchaser of a Unit who obtains title to a Unit pursuant to the foreclosure of the Mortgage shall be liable for unpaid assessments which accrued prior to the date of acquisition of title. The Recording of this Declaration shall constitute Record notice of the existence of a lien and no further Recordation of any lien shall be required.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments or change the due date of the General Assessment. If any Owner is delinquent in paying any assessment or other charge levied on his Unit, the Board may, upon ten (10) days written notice, accelerate the installments and require the General Assessment to be paid in full immediately. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, which shall include, without limitation, reasonable attorneys' fees actually incurred and the award of attorneys' fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2).

Except for those Units which are not subject to assessment pursuant to Section 8.8 hereof, no Owner may be exempt from liability for assessments for any reason, including, without limitation, non-use of Common Area, abandonment of his Unit, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for the payment of Common Expenses.

MARKUP #1 ->

MARKUP #1 · STATUTORY EVICTION / LEASING VETO CONFLICT — BOARD & COUNSEL REVIEW

Sec. 8.1(b) (p. 28): The Declaration authorizes the Board to accelerate assessments, which is expressly prohibited by recent Georgia statutory revisions.

Statutory / Legal Reference: O.C.G.A. § 43-17A-8

Statutory Comparison: O.C.G.A. § 43-17A-8(b)(2) explicitly states that no owners' association shall assess or collect accelerated assessments. The provision in Section 8.1(b) permitting the Board to require the General Assessment to be paid in full immediately upon delinquency constitutes an unlawful acceleration. (Authority excerpt: "No owners' association shall:
(1) Refuse to accept payment from an owner in any amount for any assessment; or
(2) Assess or collect accelerated assessments against any owner.")

CURRENT WORDING IN DOCUMENT:

Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum), late charges (in an amount equal to the greater of Ten and No/100 Dollars (S10.00) or ten percent(10%) of the assessment or installment not paid when due), costs of collection, and reasonable attorneys' fees actually incurred, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon the transfer or Deed Book I 53 "2 Ps 4305 conveyance of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the transfer or conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any other purchaser of a Unit who obtains title to a Unit pursuant to the foreclosure of the Mortgage shall be liable for unpaid assessments which accrued prior to the date of acquisition of title. The Recording of this Declaration shall constitute Record notice of the existence of a lien and no further Recordation of any lien shall be required. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments or change the due date of the General Assessment. If any Owner is delinquent in paying any assessment or other charge levied on his Unit, the Board may, upon ten (10) days written notice, accelerate the installments and require the General Assessment to be paid in full immediately. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments. As provided in O.C.G.A. Section 44-5- 60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, which shall include, without limitation, reasonable attorneys' fees actually incurred and the award of attorneys' fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2). Except for those...

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Notwithstanding any contrary provision in this section, this covenant shall be administered and enforced strictly in accordance with O.C.G.A. § 43-17A-8. Association counsel should review this provision and adopt a conforming amendment or board policy resolution to align with O.C.G.A. § 43-17A-8.