

ISSUE #1

MARKUP #1 ->

determines to be reasonable under the circumstances. Each day or time a violation is continued or repeated after written notice is given to the Owner or Occupant to cease and desist shall be considered a separate violation. All fines shall be an assessment and a lien against the Lot collectible as provided in Section 5 hereof.

(d) Self Help. In addition to any other remedies provided for herein, the Foundation or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Foundation Properties to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the Rules and Regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice and as otherwise provided herein. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments. The term "emergency," as used herein, shall mean a situation which requires immediate action to prevent potential danger or damage to persons or property.

(e) Costs and Attorney's Fees. Should the Foundation employ legal counsel to enforce this Declaration, the Bylaws, the Design Standards or the Rules and Regulations of the Foundation, all costs incurred in such enforcement, including reasonable attorney's fees actually incurred, shall be paid by the violating Owner and shall be an assessment and a lien against the Lot collectible as provided in Section 5 hereof.

(f) No Waiver. No delay, failure or omission on the part of the Foundation or any aggrieved Owner in exercising any right, power or remedy shall operate as a waiver or bar or otherwise affect its right to exercise or enforce any right, power or remedy provided for herein. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Foundation for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach of the provisions of this Declaration, the Bylaws, the Design Standards or the Rules and Regulations, however long continued, or for adopting provisions which may be deemed unenforceable.

(g) Notice of Violation. The Board shall have the right to record in the appropriate land records a written notice of any violation of the Declaration, the Bylaws, the Design Standards or the Rules and Regulations of the Foundation and to assess the cost of recording and removing such notices against the Owner who is responsible or whose occupants are responsible for violating the foregoing.

(h) Fining and Suspension Procedure. The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Foundation Properties, unless and until the procedure outlined in Paragraphs (i) and (ii) below is followed; provided, however, such procedure shall not be required if the suspension of the right to vote or the right to use the Foundation Properties is based on the failure to pay when due, any assessment or other charge owed to the Foundation.

(i) Notice. If any provision of the Declaration or Bylaws or any Rule or Regulation of the Foundation is violated, the Board shall serve the violator with a written notice of violation, which shall state: (A) the nature of the alleged violation and the action(s) necessary to abate

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 5 (p. 30): Forcible Self-Help Lot Entry, Non-Visible Interior Inspection, or Wildfire Defensible-Space Obstruction: Clause authorizes forcible non-judicial lot entry, interior garage inspections, or obstructs wildfire defensible-space clearing under GA law.

Statutory / Legal Reference: O.C.G.A. §§ 44-3-220 to 44-3-235 (Georgia Property Owners' Association Act); Restatement (Third) of Property (Servitudes) § 6.8
Statutory Comparison: Under O.C.G.A. §§ 44-3-220 to 44-3-235 (Georgia Property Owners' Association Act); Restatement (Third) of Property (Servitudes) § 6.8, associations cannot authorize forcible self-help entry onto private lots without judicial process or emergency necessity, cannot regulate non-visible interior garage spaces, and cannot penalize mandatory wildfire defensible-space clearing.

CURRENT WORDING IN DOCUMENT:
hereof.
(d) Self Help. In addition to any other remedies provided for herein, the Foundation or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Foundation Properties to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the Rules and Regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exer

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Amend Section 5 to require judicial process for non-emergency lot entry and limit review to visible exterior improvements under O.C.G.A. §§ 44-3-220 to 44-3-235 (Georgia Property Owners' Association Act); Restatement (Third) of Property (Servitudes) § 6.8.