

ISSUE #1

B. To suspend the voting rights, but not rights of access and easements necessary for the use of his Lot, during any period in which such member shall be in default for a period of thirty (30) days in the payment of any assessment levied by the Corporation, or the payment of any other amount or the performance of any other term of the Declaration or these By-Laws. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

C. To exercise for the Corporation all powers, duties and authority vested in or delegated to this Corporation and not reserved to the membership by other provisions of these By-Laws, or the Articles, the Declaration, or by statute;

D. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

E. To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, subject to the limitations set forth in the Declaration; and

F. To do and take all such action as is or may be necessary, desirable, or appropriate to perform the duties, obligations and responsibilities of the Board as required by the Declaration, other provisions of these By-Laws, or the Articles, or by statute.

Section 4. Duties. The Board of Directors shall have the following duties:

A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding one-fourth (1/4) of the total votes of the membership entitled to vote;

B. To supervise all officers, agents and employees of this Corporation, and to see that their duties are properly performed;

C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned for the following fiscal year by December 31 preceding the start of such fiscal year, all in accordance with the terms of the Declaration and these By-Laws;

D. To fix the amount of any special assessment against each member for each Lot owned, in accordance with the terms of the Declaration and these By-Laws;

E. To send written notice to all members of any meeting of the members called for the purpose of voting upon increases in annual assessments above the maximum set by the Declaration or for voting upon a proposed "special assessment";

F. To foreclose by action in the same manner as a mortgage the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner or other person personally obligated to pay the same;

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 6. (p. 4): Voting rights suspension clause lacks Indiana statutory notice, hearing due process, or delinquency safeguards (Ind. Code § 32-25.5-3-10 & § 32-25.5-5 (Grievance Resolution Procedure)).

Statutory / Legal Reference: Ind. Code § 32-25.5-3-10 & § 32-25.5-5 (Grievance Resolution Procedure); Ind. Code Title 32, Art. 25.5 (Indiana Homeowners Associations Act); Ind. Code Title 23, Art. 17 (Indiana Nonprofit Corporation Act)

Statutory Comparison: Under Indiana community association and nonprofit corporation statutes (Ind. Code § 32-25.5-3-10 & § 32-25.5-5 (Grievance Resolution Procedure); Ind. Code Title 23, Art. 17 (Indiana Nonprofit Corporation Act)), member voting rights are a fundamental corporate governance right and may not be summarily suspended without strict compliance with statutory delinquency thresholds, prior written notice, and an opportunity to be heard.

CURRENT WORDING IN DOCUMENT:

B. To suspend the voting rights, but not rights of access and for the use of his Lot, during any period in which such shall be in default for a period of thirty days in the payment of any assessment levied by the Corporation, or the payment of any other amount or the performance of any other term of the Declaration or these By-Laws.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Indiana law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with Ind. Code § 32-25.5-3-10 & § 32-25.5-5 (Grievance Resolution Procedure) and Ind. Code Title 23, Art. 17 (Indiana Nonprofit Corporation Act).