

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS Section

1. Powers. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations pertaining to the Subdivision, including, but not limited to, the use and maintenance of the open space areas of the Subdivision;

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(b) Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority ~~vested in or delegated to this Association and not reserved to the Members by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;~~

(d) 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; and

(e) Employ a manager, an independent contractor or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all of 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 at which such statement is requested in writing by twenty-five percent (25%) of the Members who are entitled to vote;

(b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(i) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

Sec. VII (p. 5): Voting rights suspension clause lacks Michigan statutory notice, hearing due process, or delinquency safeguards (MCL § 559.206(c) (Notice & Hearing Required Before Fine)).

Statutory / Legal Reference: MCL § 559.206(c) (Notice & Hearing Required Before Fine); MCL Ch. 559 & MCL Ch. 450; MCL §§ 450.2101 - 450.3192 (Michigan Nonprofit Corporation Act)

Statutory Comparison: Under Michigan community association and nonprofit corporation statutes (MCL § 559.206(c) (Notice & Hearing Required Before Fine); MCL §§ 450.2101 - 450.3192 (Michigan 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:

Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Michigan law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with MCL § 559.206(c) (Notice & Hearing Required Before Fine) and MCL §§ 450.2101 - 450.3192 (Michigan Nonprofit Corporation Act).