

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 6 (p. 7): Fining or member suspension provision authorizes sanctions without the mandatory 15-day prior written notice and fair hearing procedure required under Mont. Code Ann. § 35-2-521 and § 70-23-308.

Statutory / Legal Reference: Mont. Code Ann. § 35-2-521 & § 70-23-308; ARM 24.210.641

Statutory Comparison: Under Mont. Code Ann. § 35-2-521 (Montana Nonprofit Corporation Act) and § 70-23-308 (Montana Unit Ownership Act), any proceeding or procedure challenging or disciplining a member - including suspending membership privileges or imposing disciplinary fines - must be carried out in good faith and in a fair and reasonable manner, requiring at least 15 days' prior written notice by first-class or certified mail stating the reasons and an opportunity for the member to be heard orally or in writing at least 5 days before the effective date of the sanction.

CURRENT WORDING IN DOCUMENT:
Adopt fines and policies as may be required to support the recorded covenants. H. To pay for the expenses of the maintenance, repair, and upkeep of the general Common Areas and to approve payment vouchers either at regular or special meetings.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Pursuant to Mont. Code Ann. § 35-2-521 and § 70-23-308, no fine or suspension of member rights shall be imposed except pursuant to a written schedule and a fair and reasonable procedure carried out in good faith that provides: (a) not less than fifteen (15) days' prior written notice of the proposed fine or suspension and the reasons therefor; and (b) an opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the fine or suspension.

ISSUE #1

- A. To call annual meetings of the Association and give due notice thereof
- B. To conduct elections of the Board of Directors
- C. To enforce the Declaration and Bylaws of Blackwood Groves Subdivision by appropriate action.
- D. To issue and adopt rules and regulations for the use and occupancy of the Common Areas and for the occupancy of the Lots consistent with the recorded covenants.
- E. To provide for the management of the Association by hiring or contracting with suitable and capable management and personnel (the “Manager”) for the day-to-day operation, maintenance, upkeep, and repair of the Common Areas.
- F. To levy assessments as allowed by the Declaration, these Bylaws, and the State of Montana, and to provide for the collection, expenditure, and accounting of the assessments.
- G. Adopt fines and policies as may be required to support the recorded covenants.
- H. To pay for the expenses of the maintenance, repair, and upkeep of the general Common Areas and to approve payment vouchers either at regular or special meetings.
- I. To delegate authority to the Manager for the routine conduct of Association business, however, such authority shall be precisely defined with ultimate authority at all times residing in the Board of Directors
- J. To provide a means of hearing grievances of Owners and to respond appropriately thereto.
- K. To meet at regularly scheduled times and to hold such meetings open to all Owners or their agents.
- L. To prepare, adopt and present an annual budget to the Association in order to determine the amount of the assessments payable by the Owners to meet the expenses of the Association, and allocate and assess such charges among the Owners. To levy and collect special assessments whenever, in the opinion of the Board of Directors, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.
- M. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Owners, or from any person or persons owing money to the Association, and to levy a penalty and to charge interest on unpaid amounts due. However, other than for the collection of delinquent assessments or accounts, the Board of Directors shall not initiate any litigation or lawsuit without prior notice to the Association.
- N. To defend in the name of the Association any lawsuits wherein the Property and/or Association is a party defendant.