

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

ARTICLE VII
PROPERTY RIGHTS

Section 7.01 Easement of Enjoyment in and to Association Land. Every Member Unit Owner and/or Tenant shall have a right and easement of enjoyment in and to Association Land and such easement shall be appurtenant to and shall pass with any of the interests described in Sections 1.10, 1.11, 1.13, 1.14, 1.20 or 1.21, 1.26 or 1.27 hereof. All such rights and easements are subject to the right of the Association, in accordance with the Certificate of Incorporation, and By-Laws:

- (i) to limit the number of invitees of Members in or upon any Association Land or any facilities located thereon and only Members who pay Association fees will have rights to the recreational facilities; excepting the registered guests of a Development may use all recreational facilities except the Community Center;
- (ii) to charge reasonable admission and other fees for the use of any recreational facilities situated upon Association Land;
- (iii) to borrow money for the purpose of improving Association Land and/or amenities owned or leased by the Association and in aid thereof to mortgage the same;
- (iv) to suspend the voting rights (including Board Members) and the right to use any Village facilities by a Unit Owner or Tenant for any period during which any dues or any assessment remain unpaid for a period of 45 days, or during which a violation of the Bristol Harbour Village Restrictions exists; and for a period not to exceed 30 days for any infraction of rules and regulations adopted and promulgated by the Association;
- (v) to grant easements or rights of way to any public utility corporation or public agency;

Sec. 1.10 (p. 27): Voting rights suspension clause lacks New York statutory notice, hearing due process, or delinquency safeguards (N.Y. Real Prop. Law § 339-j).

Statutory / Legal Reference: N.Y. Real Prop. Law § 339-j; N.Y. Not-for-Profit Corp. Law (N-PCL), Real Prop. Law Art. 9-B & 13 NYCRR Parts 18, 20, 21 & 22 (NY AG Real Estate Finance Bureau Offering Plan Regulations); N.Y. Bus. Corp. Law (BCL) §...

Statutory Comparison: Under New York community association and nonprofit corporation statutes (N.Y. Real Prop. Law § 339-j; N.Y. Bus. Corp. Law (BCL) § 727, N-PCL § 621 & 13 NYCRR Part 18 (Cooperative Offering Plans)), 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:

to suspend the voting rights (including Board Members) and the right to ') use any Village facilities by a Unit Owner or Tenant for any period during which any dues or any assessment remain unpaid for a period of 45 days, or during which a violation of the Bristol

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by New York law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with N.Y. Real Prop. Law § 339-j and N.Y. Bus. Corp. Law (BCL) § 727, N-PCL § 621 & 13 NYCRR Part 18 (Cooperative Offering Plans).

ISSUE #1