

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

ARTICLE VI

BOARD OF DIRECTORS: POWERS AND DUTIES

Section 1; POWERS. The Board of Directors shall have the power to:

- ISSUE #1
- (A) Adopt the published rules and regulations governing the Development and facilities including the personal conduct of the members and their guests thereon; to establish penalties for infractions of such rules and regulations.
- (B) Suspend the voting rights and right to use of the recreational facilities of any Member during any period in which such Member is in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, *for a date and duration to be determined by the Board of Directors on a case by case basis* for infractions of published rules and regulations.
- (C) Exercise on behalf of the Association all powers, duties and authority vested in or delegated to the Association and not specifically reserved to the membership by the Declaration, Articles of Incorporation, or by other provisions of these By-Laws.
- (D) Employ a manager, independent contractors, and such other employees *or appointed committees* as they may deem necessary, and to prescribe their duties.
- (E) No individual Director or Officer is authorized to incur the POA for any amount over One Hundred dollars (\$100). No individual Director or Officer, with approval of the Treasurer, is authorized to incur the POA for any amount over Five Hundred dollars (\$500). All incumbrances' over Five Hundred dollars (\$500) require approval, by vote, of a majority of the Board of Directors. Amended May 14, 2009

Section 2; DUTIES. It shall be the duty of the Board of Directors to:

- (A) Supervise all officers, agents, and employees of the Association and see to it that their duties are properly performed.
- (B) As more fully provided in the Declaration, to:

(1) Fix the amount of the annual assessment against each Lot or Living Unit in advance of each annual assessment period.

(2) Send written notices of each assessment to every Owner subject thereto in advance of each assessment period, and

(3) Foreclose the lien against any Lot or Living Unit for which assessments are not paid within thirty (30) days after the due date, or to bring an action at law against the Owner personally obligated to pay the same.

Sec. 1 (p. 7): Clause authorizes fines exceeding North Carolina's statutory \$100 per violation / \$100 per day cap under N.C. Gen. Stat. § 47F-3-107.1.

Statutory / Legal Reference: N.C. Gen. Stat. § 47F-3-107.1

Statutory Comparison: Under N.C. Gen. Stat. § 47F-3-107.1, a lot or unit owner may not be fined or have planned community/condominium privileges or services suspended unless the owner is given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision before an adjudicatory panel appointed by the executive board (whose members must contain no officers, directors, or their immediate family members) or before the executive board itself. If a violation is found, the fine may not exceed one hundred dollars (\$100.00) for the violation, plus up to one hundred dollars (\$100.00) per day for any continuing violation occurring more than five (5) days after the decision is communicated to the owner.

CURRENT WORDING IN DOCUMENT:

penalties for infractions of such rules and regulations.

(B) Suspend the voting rights and right to use of the recreational facilities of any Member during any period in which such Member is in default in the payment of any assessment levied by the Association.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to N.C. Gen. Stat. § 47F-3-107.1, no fine or suspension of community privileges or services shall be imposed until the owner has been given written notice of the alleged violation and an opportunity to be heard and present evidence before the Executive Board or an adjudicatory panel composed of members who are neither officers nor directors of the Association. Any fine imposed shall not exceed One Hundred Dollars (\$100.00) for a single violation, and for a continuing violation may not exceed One Hundred Dollars (\$100.00) per day beginning more than five (5) days after the decision is communicated that the violation occurs. The owner may appeal an adjudicatory panel decision to the full Executive Board within fifteen (15) days.