

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

(a) The Owner shall maintain property insurance at full insurable value based on replacement cost on the owned Property. This is to include fire and extended coverage of all other types of coverage commonly maintained on such properties. The Owner must provide proof of insurance to the Association upon written request by the Board of Directors.

(b) The Association shall maintain comprehensive public liability insurance for personal injury or property damage on the Common Elements. All insurance is maintained as a common expense. The Association acts as trustee for the purpose of obtaining insurance coverage and the receipt, application and disbursement of proceeds from it.

(c) The Association shall provide liability insurance coverage to protect members of the Board of Directors.

2.09 *Owner's Easement of Enjoyment.* Every owner shall have the right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to section 2.10 and the following provisions:

(a) the right and easement of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and right to the use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by ninety (90%) percent of the owners.

2.10 *Delegation of Use.* Any owner may delegate in accordance with the By-laws, their right of enjoyment to the Common Area and facilities to the members of their family, tenants, or contract purchasers who reside on the property.

ARTICLE III  
ASSESSMENTS

3.01 *Duty to Pay Assessments.* Each Owner of any Lot, for said Owner, the Owner's heirs, devisees, legal representatives, personal representatives, successors and assigns, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments or charges for common expenses for maintenance and improvement of the Common Elements and all other common expenses of the Association as the same are approved and levied by the Board of Directors of the Association, including but not limited to, assessments for capital improvements, reasonable reserves, and administrative expenses. In the event that two (two) or more Lots are combined for the purpose of providing one (1) combined Lot, such Owner shall pay an Assessment for each of the prior existing lots.

Sec. 2.10 (p. 5): Voting rights suspension clause lacks mandatory statutory notice and adjudicatory hearing procedures.

Statutory / Legal Reference: N.C.G.S. § 47F-3-102(11) & § 47F-3-107.1 (PCA) / § 47C-3-102(11) & § 47C-3-107.1 (Condo)

Statutory Comparison: Under North Carolina General Statutes §§ 47F-3-102(11) and 47F-3-107.1, an association may not suspend planned community privileges or services for nonpayment for less than 30 days after delinquency or without providing written notice and an opportunity to be heard before an adjudicatory panel.

CURRENT WORDING IN DOCUMENT:

- (b) the right of the Association to suspend the voting rights and right to the use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that voting rights or community privileges may only be suspended when assessments remain unpaid for 30 days or more and only after written notice and an opportunity to be heard pursuant to N.C.G.S. §§ 47F-3-102(11), 47F-3-107.1.

ISSUE #1