

Somerset Hills III HOA - Declaration of Covenants, Conditions & Restrictions - Page 1

ISSUE #1Section 1: [Article IV, Section 4.7] Lien for Assessments and Unilateral Attorney Fees

If any assessment or fine is not paid within thirty (30) days after its due date, the Association may record a notice of lien and foreclose the same without prior notice to the Owner, and the Owner shall pay all attorneys' fees incurred by the Association regardless of whether the Association prevails.

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 1 (p. 1): Clause imposes non-reciprocal attorney fee liability or requires owners to pay association legal fees even when the owner prevails.

Statutory / Legal Reference: ORS §§ 94.630(1)(n), 100.405(4)(k) (Written Schedule of Fines & Hearing); ORS Ch. 94 (§§ 94.550 - 94.783 Oregon Planned Community Act) & OAR Ch. 863, Div. 25 (Oregon Real Estate Agency Association Rules) (Oregon...

Statutory Comparison: Under Oregon statutory enforcement standards (ORS §§ 94.630(1)(n), 100.405(4)(k) (Written Schedule of Fines & Hearing); ORS Ch. 94 (§§ 94.550 - 94.783 Oregon Planned Community Act) & OAR Ch. 863, Div. 25 (Oregon Real Estate Agency Association Rules)) and equitable contract principles, an association cannot compel an owner to pay the association's attorney fees when the owner is the prevailing party in litigation, nor waive a prevailing owner's statutory right to fee recovery.

CURRENT WORDING IN DOCUMENT:

[Article IV, Section 4.7] Lien for Assessments and Unilateral Attorney Fees If any assessment or fine is not paid within thirty (30) days after its due date, the Association may record a notice of lien and foreclose the same without prior notice to the Owner, and the Owner shall pay all attorneys' fees incurred by the Association regardless of whether the Association prevails.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

In any legal or equitable action or proceeding between the Association and an Owner to enforce or interpret the Governing Documents, the prevailing party shall be entitled to recover reasonable attorney's fees and costs pursuant to ORS §§ 94.630(1)(n), 100.405(4)(k) (Written Schedule of Fines & Hearing); ORS Ch. 94 (§§ 94.550 - 94.783 Oregon Planned Community Act) & OAR Ch. 863, Div. 25 (Oregon Real Estate Agency Association Rules) (Oregon Prevailing-Party Fee Standard).