



**PROPERTY RIGHTS IN THE COMMON PROPERTIES**

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

**3. PROPERTY RIGHTS IN THE COMMON PROPERTY.**

**3.1 Members' Easements of Enjoyment.** Subject to the provisions of Paragraph 3.2, every Member subject to assessments as provided in Article 5, shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

**3.2 Use of Common Properties for Drainage.** Some of the Common Properties may be used for drainage and the temporary retention of storm water run-off from the subject property and other contiguous property, as well as for open space, recreation, rights of ingress and egress and other related activities. No structure, planting or other material shall be placed or permitted to remain in the Common Properties which might impair or interfere with the drainage or temporary retention of storm water run-off of the subject property or other contiguous property.

3.2.1 As provided above, the obligation to maintain the Common Property for drainage purposes shall be an obligation of the Association unless and until the area is transferred to a governmental authority for maintenance and control thereof at which time the Association shall relinquish control and each Member of the Association shall be required to make payments as established by the governmental authority.

3.2.2 In the event the Association is dissolved or otherwise ceases to exist, then in such event the Association shall have the right to assign, transfer and deliver over to a governmental authority or to any other like organization the powers herein reserved to the Association.

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**3.3 Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

3.3.1 It is the right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties, if needed.

3.3.2 The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure.

3.3.3 The right of the Association, as provided in its Charter and Bylaws to suspend the voting rights of any Property Owner for any period during which any Assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

3.3.4 The right of the Association to charge reasonable admission and other fees for the maintenance of the Common Properties.

3.3.5 The drainage and temporary retention of storm water run-off uses of the Common Properties referred to in Paragraph 3.2, and elsewhere herein.

Sec. 3.3.3 (p. 17): Voting rights suspension clause lacks Tennessee statutory notice, hearing due process, or delinquency safeguards (Tenn. Code Ann. § 66-27-402(a)(11) (Reasonable Notice & Opportunity to be Heard)).

**Statutory / Legal Reference:** Tenn. Code Ann. § 66-27-402(a)(11) (Reasonable Notice & Opportunity to be Heard); Tenn. Code Ann. Title 66, Ch. 27, Title 48, Ch. 51 - 68 & Tenn. Comp. R. & Regs. 1260-02-.09; Tenn. Code Ann. §§ 48-51-101 to 48-68-211...

**Statutory Comparison:** Under Tennessee community association and nonprofit corporation statutes (Tenn. Code Ann. § 66-27-402(a)(11) (Reasonable Notice & Opportunity to be Heard); Tenn. Code Ann. §§ 48-51-101 to 48-68-211 (Tennessee Nonprofit Corporation Act)), 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:**

The right of the Association, as provided in its Charter and Bylaws to suspend the voting rights of any Property Owner for any period during which any Assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

**SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):**

Provided that any suspension of voting or membership privileges (to the extent permitted by Tennessee law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with Tenn. Code Ann. § 66-27-402(a)(11) (Reasonable Notice & Opportunity to be Heard) and Tenn. Code Ann. §§ 48-51-101 to 48-68-211 (Tennessee Nonprofit Corporation Act).