

ISSUE #1

MARKUP #1 ->

- (vi) In the event the Violation is deemed to be an uncurable violation or violation posing a threat to health or safety, as reasonably determined by the Board, ~~the Association is not required by law to provide an opportunity to cure and~~ may impose an immediate fine. The following are examples of acts considered uncurable: (1) shooting fireworks or discharging a firearm; (2) an act constituting a threat to health or safety; (3) a noise violation that is not ongoing; (4) damaging Association property, including the removal or alteration of landscape; and (5) holding a garage sale or other event prohibited by a dedicatory instrument; and
- (vii) His/her right to assert and protect his/her rights as a member of the Armed Forces of the United States. The protected individual or family member shall send written notice of their active-duty military service to the sender of the Notice of Violation immediately; and
- (viii) His/her right to make a written request for a hearing on or before the thirtieth ~~(30th) day after the Notice of Violation is mailed, i.e., thirty three (33) days~~ after the date of the Notice of Violation. The hearing, if one is requested in a timely manner, will be held before the Board.

The Notice of Violation shall be sent to the Owner by certified mail, return receipt requested, and first-class U.S. mail. The Owner shall be responsible for administrative and postage fee expenses in delivering notices under this Enforcement Policy. In addition to the foregoing delivery methods, the Notice of Violation may also be sent by electronic mail, if an electronic mail address has been provided by the Owner. It is the responsibility of the Owner to update the Association with regards to any address, telephone number, or electronic mail address changes.

c. Failure to Remedy and Notice of Fine. Failure to (i) submit complete plans and specifications showing that the Violation will be remedied, (ii) cease all non-remedial work immediately upon receipt of the Notice of Violation, and/or (iii) remedy the current Violation existing upon the Lot within fourteen (14) days of the date of the Notice of Violation, shall constitute a continuing Violation and result in one or more of the following: (a) the imposition of violation fines as determined by the Board against the Owner, (b) the suspension of the right to enter upon and/or use any recreational facilities within the Common Area(s), and/or (c) the pursuit of any other remedy available at law or in equity, under the Governing Documents or this Enforcement Policy including, but without limitation, the recording in the County Clerk’s office of a Notice that the Lot in question is in violation of restrictive covenants or an action for injunctive relief and civil damages. The Association may, but is under no obligation to, send a notice to the Owner in the form of a formal written notice of fine (“*Notice of Fine*”) informing the recipient of the continuing Violation and the remedy chosen as a result thereof. The date of the Notice of Fine shall be the “*Notice of Fine Date*.”

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 3 (p. 4): Enforcement/fining provision omits mandatory Texas Property Code § 209.006 certified mail notice, 30-day Board hearing request window, or HB 614 recorded fine schedule requirements.

Statutory / Legal Reference: Tex. Prop. Code § 209.006, § 209.0061 & § 209.007

Statutory Comparison: Under Tex. Prop. Code § 209.006 and § 209.007, an association may not levy a fine or suspend an owner's right to use a common area unless it first gives written notice by certified mail describing the violation, providing a reasonable period to cure (if curable and not a repeat violation within 6 months), and stating that the owner may request a hearing before the Board on or before the 30th day after the notice was mailed. Further, under § 209.0061 (HB 614), the association must maintain and provide a recorded enforcement policy specifying general categories of restrictive covenants and a schedule of fines for each category.

CURRENT WORDING IN DOCUMENT:

may impose an immediate fine. The following are examples of acts considered uncurable: (1) shooting fireworks or discharging a firearm; (2) an act constituting a threat to health or safety; (3) a noise violation that is not ongoing; (4) damaging Association property, including the removal or alteration of landscape; and (5) holding a garage sale or other event prohibited by a dedicatory instrument; and
(vii) His/her right to assert and protect his/her rights as a member of the Armed Forces of the United States.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Before the Association levies a fine, suspends an Owner's right to use a common area, or files suit other than to collect regular or special assessments or foreclose a lien, the Association shall give written notice to the Owner by certified mail in compliance with Tex. Prop. Code § 209.006. The notice must describe the violation, include a copy of or link to the Association's recorded enforcement and fine schedule policy required by Tex. Prop. Code § 209.0061 (HB 614), specify a reasonable cure period (for curable violations), and inform the Owner that they have thirty (30) days from the date notice is mailed to submit a written request for a hearing before the Board pursuant to Tex. Prop. Code § 209.007.