



MARKUP #1 ->

amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

**9.4 Roadway and Utility Easements.** Declarant reserves the right to create, locate, relocate, construct, erect, and maintain or cause to be created, located, relocated, constructed, erected, and maintained in and on any portion of the Property then owned by Declarant or any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

**9.5 Enforcement.** The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. The Association and/or the Declarant may initiate, defend, or intervene in any action brought to enforce any provision of the Restrictions. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents.

**9.6 Declarant Fine Authority.** During the Development Period, Declarant may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or any guests, agents, family members, or invitees of an Owner or Resident. The Declarant uses fines to discourage violations of the Restrictions, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Declarant. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Declarant for enforcing the Restrictions. The Declarant may from time to time adopt a schedule of fines. If the violation of the Restrictions is ongoing or continuous, the fine may be assessed on a periodic basis (such

ISSUE #1

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

**Sec. 6.12.1 (p. 52): 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:**

Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees. Any fine and/or charge levied in accordance

**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.