Section 9.6. - Sample Provision Excerpt (Public Preview)

Texas law), late charges, fines, and costs of collection (including attorney's fees and costs). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with...

ISSUE #1

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. 9.6. (p. 35): Clause authorizes nonjudicial power-of-sale foreclosure without first obtaining a mandatory Tex. R. Civ. P. 736 court order under Tex. Prop. Code § 209.0092.

Statutory / Legal Reference: Tex. Prop. Code § 209.009 & 209.0092

Statutory Comparison: Under Tex. Prop. Code § 209.009, a property owners' association may not foreclose a property owners' association assessment lien if the debt securing the lien consists solely of: (1) fines assessed by the association, (2) attorney's fees incurred by the association solely associated with fines assessed by the association, or (3) copy/recount charges under § 209.005(i) or § 209.0057(b-4).

CURRENT WORDING IN DOCUMENT:
Texas law), late charges, fines, and costs of collection (including attorney's fees and costs). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with...

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Pursuant to Tex. Prop. Code § 209.009, the Association shall not foreclose an assessment lien if the debt securing the lien consists solely of fines, attorney's fees solely associated with fines, or records/recount fees. Pursuant to Tex. Prop.