Section 5.11. - Sample Provision Excerpt (Public Preview)

pursuant to Section 5.9 above, consider or vote on: (a) fines; (b) damage Assessments; (c) the initiation of foreclosure actions; (d) the initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in Assessments; (f) levying of Special Assessments; (g) appeals from a denial...

ISSUE #1

MARKUP #1 ->

MARKUP #1 · POTENTIAL ISSUE FOR REVIEW

BOARD & COUNSEL REVIEW

Sec. 5.11. (p. 21): Potential Issue for Review: Fining or enforcement clause grants authority to levy fines or penalties without spelling out the statutory notice, cure, fine schedule, and hearing procedures under Tex. Prop. Code § 209.006, § 209.0061 & § 209.007 - look for this language in other governing documents (such as a standalone Fining/Enforcement Policy, Rules & Regulations, Bylaws, or amendments) that were not included in this review.

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...

CURRENT WORDING IN DOCUMENT:

pursuant to Section 5.9 above, consider or vote on: (a) fines; (b) damage Assessments; (c) the initiation of foreclosure actions; (d) the initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in Assessments; (f) levying of Special Assessments; (g) appeals from a denial...

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Look for the required notice, cure, fine schedule, and hearing language in other governing documents not included in this review. If not already set forth in another document, incorporate: 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...