

ARTICLE XIII
COMPLIANCE AND ENFORCEMENT

ISSUE #1

13.1 Compliance.

Each Owner, tenant or occupant of a Living Unit shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute.

Failure to comply therewith shall be grounds for fine or an action or suit maintainable by the Association or an aggrieved Owner.

13.2 Remedies.

Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

- (a) To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;
- (b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association; or

(d) The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration.

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto.

13.3 Action by Owners.

Subject to any limitation imposed under this Declaration, the Bylaws or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

13.4 Injunctive Relief.

Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

Sec. 13.1 (p. 34): Voting rights suspension clause lacks Utah statutory notice, hearing due process, or delinquency safeguards (Utah Code §§ 57-8a-208, 57-8-37 (48-Hour Cure Notice & \$500 Monthly Cap)).

Statutory / Legal Reference: Utah Code §§ 57-8a-208, 57-8-37 (48-Hour Cure Notice & \$500 Monthly Cap); Utah Code §§ 57-8a-101 to 57-8a-703 (Utah Community Association Act) & Utah Admin. Code R162-2f / R156-55a (Division of Real Estate...)

Statutory Comparison: Under Utah community association and nonprofit corporation statutes (Utah Code §§ 57-8a-208, 57-8-37 (48-Hour Cure Notice & \$500 Monthly Cap); Utah Code §§ 16-6a-101 et seq. (Utah Revised 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 to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration. Failure to comply therewith shall be grounds for fine or an action or suit maintainable by the Association or an aggrieved Owner.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Utah law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with Utah Code §§ 57-8a-208, 57-8-37 (48-Hour Cure Notice & \$500 Monthly Cap) and Utah Code §§ 16-6a-101 et seq. (Utah Revised Nonprofit Corporation Act).