

ISSUE #1

Section 1: [Article IX, Section 9.4] Enforcement of Monetary Penalties as Assessment Lien

The Board of Directors shall have the right to levy reasonable fines against an Owner for any violation of this Declaration, the Design Review Guidelines, or the Rules and Regulations. Any unpaid fine, together with costs and attorneys' fees incurred in enforcement, shall constitute a continuing lien upon the Lot of such Owner enforceable by foreclosure in the same manner as Annual Assessments.

MARKUP #1 ->

MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. Article IX, Section 9.4 (p. 1): Treating unpaid violation fines and enforcement fees as a real estate lien enforceable by foreclosure.

Statutory / Legal Reference: A.R.S. § 33-1807(A)

Statutory Comparison: Under the Arizona Planned Communities Act, A.R.S. § 33-1807(A), an association's statutory lien applies only to assessments, late charges for assessments, and collection/attorney fees related to assessments. The statute expressly provides that fees, charges, late charges, fines, and interest charged after the notice of opportunity to be heard for non-assessment violations are NOT enforceable as common expense assessment liens against the lot.

CURRENT WORDING IN DOCUMENT:

[Article IX, Section 9.4] Enforcement of Monetary Penalties as Assessment Lien - The Board of Directors shall have the right to levy reasonable fines against an Owner for any violation of this Declaration, the Design Review Guidelines, or the Rules and Regulations. Any unpaid fine, together with costs and attorneys' fees incurred in enforcement, shall constitute a continuing lien upon the Lot of such Owner enforceable by foreclosure in the same manner as Annual Assessments.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section Article IX, Section 9.4 ([Article IX, Section 9.4] Enforcement of Monetary Penalties as Assessment Lien - The Board of Directors shall have the right to levy reasonable fines against an Owner for any violation of this Declaration, the Design Review Guidelines, or the Rules and Regulations. Any unpaid fine, together with costs and attorneys' fees incurred in enforcement, shall constitute a continuing lien upon the Lot of such Owner enforceable by foreclosure in the same manner as Annual Assessments.) to conform with A.R.S. § 33-1807(A) and the manual attorney audit recommendations for The Foothills Community Association.