

ISSUE #1

MARKUP #1 ->

Section 1: [Section 3.25] Enforcement

In the event of a continuing violation, each day the violation continues beyond the 15-Day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without notice to the violator.

Section 2: [Section 3.16] Open Meetings

Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on a Member's behalf by a director. In such case, the president may limit the time any Member may speak.

Section 3: [Section 2.11 & Section 6.6(c)] Quorum & Effective Date of Amendments

[Recorded Book 1116, Page 779, Section 2.11]: 'Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of Members representing 20% of the total Class A votes in the Association shall constitute a quorum at all meetings of the Association.' vs. [Unrecorded Clean Jan 2016 Bylaws, Section 2.11]: '...the presence in person or by proxy of Members representing 10% of the total Class A votes...' [Section 6.6(c)]: 'Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment.'

Section 4: [Section 6.6(a)] Amendment by Declarant

Until termination of the Class 'B' membership, Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination... In addition, during the Development Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. Section 3.25 (p. 1): Clause permits fining or privilege suspension without mandatory written notice and an adjudicatory hearing (or permits officers/directors on a separate adjudicatory panel) under N.C. Gen. Stat. § 47F-3-107.1.

Statutory / Legal Reference: N.C. Gen. Stat. § 47F-3-107.1

Statutory Comparison: Under N.C. Gen. Stat. § 47F-3-107.1, a lot or unit owner may not be fined or have planned community/condominium privileges or services suspended unless the owner is given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision before an adjudicatory panel appointed by the executive board (whose members must contain no officers, directors, or their immediate family members) or before the executive board itself. If a violation is found, the fine may not exceed one hundred dollars (\$100.00) for the violation, plus up to one hundred dollars (\$100.00) per day for any continuing violation occurring more than five (5) days after the decision is communicated to the owner.

CURRENT WORDING IN DOCUMENT:

[Section 3.25] Enforcement - In the event of a continuing violation, each day the violation continues beyond the 15-Day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without notice to the violator.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to N.C. Gen. Stat. § 47F-3-107.1, no fine or suspension of community privileges or services shall be imposed until the owner has been given written notice of the alleged violation and an opportunity to be heard and present evidence before the Executive Board or an adjudicatory panel composed of members who are neither officers nor directors of the Association. Any fine imposed shall not exceed One Hundred Dollars (\$100.00) for a single violation, and for a continuing violation may not exceed One Hundred Dollars (\$100.00) per day beginning more than five (5) days after the decision is communicated that the violation occurs. The owner may appeal an adjudicatory panel decision to the full Executive Board within fifteen (15) days.