

ISSUE #1

MARKUP #1 ->

Section 1: [Article IV, Section 4.1 & Section 4.9] Creation of the Lien and Personal Obligation of Assessments, Foreclosure

Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges, (2) Special Assessments, and (3) Individual Assessments, including fines, late fees, interest, and collection costs. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing vendor's and contractual lien upon the Lot against which each such assessment is made. Such lien may be enforced by the Association by non-judicial foreclosure Conducted in accordance with Section 51.002 of the Texas Property Code or by judicial foreclosure.

Section 2: [Article VIII, Section 8.1 & Modification Design Guidelines Section 1.2] Architectural Control and Mandatory

No building, fence, wall, pool, outbuilding, landscaping, exterior painting, roofing, or other structure or exterior modification shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Modification Committee (MC) or New Construction Committee (NCC). Decisions of the Modification Committee regarding aesthetic harmony and compatibility shall be final and binding, and prior approvals do not establish a binding precedent for any subsequent application.

Section 3: [Article IX, Section 9.15 & Leasing Guidelines] Single-Family Residential Use and Leasing Requirements

Lots shall be used solely for single-family residential purposes. No Lot or Residence may be leased for transient or hotel purposes or for less than the entire Residence. Owners leasing their Lot must register all adult tenants and furnish the Association with tenant contact information and a written acknowledgment that the tenant has received and agrees to abide by the Declaration, Bylaws, and Design Guidelines.

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

**Sec. Article IV, Section 4.1 & Section 4.9 (p. 1): Assessment collection and lien enforcement clause omits the mandatory 45-day certified mail collection cure notice (§ 209.0064 / SB 1588), HB 886 pre-lien dual notices (§ 209.0094), or the mandatory Rule 736 court order prior to foreclosure (§ 209.0092).**

**Statutory / Legal Reference: Tex. Prop. Code § 209.0062, § 209.0064, § 209.0092 & § 209.0094**

Statutory Comparison: Under Tex. Prop. Code § 209.0064 (as amended by SB 1588), an association may not hold an owner liable for fees of a collection agent or report a delinquency to a credit reporting service unless it first sends written notice by certified mail specifying each delinquent amount, offering a minimum 3-month Alternative Payment Schedule under § 209.0062, and granting a 45-day period to cure. Further, under § 209.0094 (HB 886), an association must send two separate delinquency notices (the second by certified mail at least 30 days after the first) and wait 90 days before filing an assessment lien, and under § 209.0092 and § 209.009 may not foreclose without first obtaining a court order under Tex. R. Civ. P. 736 (nor foreclose a lien consisting solely of fines or attorney's fees associated with fines).

CURRENT WORDING IN DOCUMENT:

[Article IV, Section 4.1 & Section 4.9] Creation of the Lien and Personal Obligation of Assessments; Foreclosure - Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges, (2) Special Assessments, and (3) Individual Assessments, including fines, late fees, interest, and collection costs. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing vendor's and contractual lien upon the Lot against which each such assessment is made. Such lien may be enforced by the Association by non-judicial foreclosure Conducted in accordance with Section 51.002 of the Texas Property Code or by judicial foreclosure.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Assessment collection and lien enforcement shall strictly comply with Tex. Prop. Code §§ 209.0062 - 209.0094, including: (1) sending certified mail notice providing a forty-five (45) day cure period and offering an Alternative Payment Plan before charging collection agent fees or reporting to credit bureaus (§ 209.0064); (2) satisfying the dual-notice and 90-day waiting period before recording an assessment lien under HB 886 (§ 209.0094); (3) obtaining a court order under Tex. R. Civ. P. 736 prior to any expedited foreclosure (§ 209.0092); and (4) never foreclosing a lien consisting solely of fines or fine-related attorney's fees (§ 209.009).