

Section 1: [Declaration of Covenants and Restrictions for Glade Springs Village, Article VIII, Section 8.1]

MARKUP #1 ->

All annual, special, and utility/recreational assessments, together with interest at eighteen percent (18%) per annum, late fees, costs of collection, and attorney's fees, shall be a continuing charge and lien upon the Lot until paid in full, and may be enforced by the Association by non-judicial sale or action at law.



MARKUP #1 · SUBJECTIVE OR OVERBROAD WORDING

BOARD & COUNSEL REVIEW

Sec. Declaration of Covenants and Restrictions for Glade Springs Village, Article VIII, Section 8.1 (p. 1): Three-Year Statutory Lien Extinguishment Under W. Va. Code § 36B-3-116(e) and WVCCPA Limits on Unadjudicated Attorney's Fees

Statutory / Legal Reference: W. Va. Code § 36B-3-116(e) & § 36B-3-116(i) (WV UCIOA - Lien for Assessments) & W. Va. Code § 46A-2-128

Statutory Comparison: In direct litigation involving Glade Springs Village Property Owners Association (including Justice Holdings LLC v. Glade Springs Village POA, Inc., 836 S.E.2d 831 (W. Va. 2019)), the West Virginia Supreme Court of Appeals confirmed that Glade Springs Village is governed by the West Virginia Uniform Common Interest Ownership Act (W. Va. Code Chapter 36B). Under W. Va. Code § 36B-3-116(e), a lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments becomes due - it does NOT continue indefinitely 'until paid in full.' Additionally, under Fleet v. Webber Springs Owners Ass'n, 772 S.E.2d 369 (W. Va. 2015), demanding unadjudicated attorney's fees prior to court judgment violates the WVCCPA (W. Va. Code § 46A-2-128).

CURRENT WORDING IN DOCUMENT:

[Declaration of Covenants and Restrictions for Glade Springs Village, Article VIII, Section 8.1] Continuing Assessment Lien with Three-Year Statutory Extinguishment Omitted and Non-Judicial Enforcement Claimed - All annual, special, and utility/recreational assessments, together with interest at eighteen percent (18%) per annum, late fees, costs of collection, and attorney's fees, shall be a continuing charge and lien upon the Lot until paid in full, and may be enforced by the Association by non-judicial sale or action at law.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section Declaration of Covenants and Restrictions for Glade Springs Village, Article VIII, Section 8.1 ([Declaration of Covenants and Restrictions for Glade Springs Village, Article VIII, Section 8.1] Continuing Assessment Lien with Three-Year Statutory Extinguishment Omitted and Non-Judicial Enforcement Claimed - All annual, special, and utility/recreational assessments, together with interest at eighteen percent (18%) per annum, late fees, costs of collection, and attorney's fees, shall be a continuing charge and lien upon the Lot until paid in full, and may be enforced by the Association by non-judicial sale or action at law.) to conform with W. Va. Code § 36B-3-116(e) & § 36B-3-116(i) (WV UCIOA - Lien for Assessments) & W. Va. Code § 46A-2-128 and the manual attorney audit recommendations for Glade Springs Village Property Owners Association, Inc..