

FINES AND FINING PROCEDURES

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Enforcement of a condominium (“Condo”) or homeowners association’s (“HOA”) governing document is one of the most important duties of a board of directors. Associations have numerous tools at their disposal with which to enforce their association’s rules and regulations. One of the most useful of these tools is monetary fines against a homeowner for violation of the association’s governing documents or other rules or regulations.

Both Condos and HOAs are granted authority to impose fines against homeowners (Condos by section 718.303 of the Florida Statutes and HOAs by section 720.305 of the Florida Statutes). While the law differs slightly between Condos and HOAs regarding the legal options for collecting fines which have been imposed (this will be discussed later in this article), the process by which fines are imposed is virtually the same, regardless of the type of community association.

Notice

The fining process for both Condos and HOAs starts with a formal written notice being delivered to the homeowner, tenant, guest or invitee whom the association wishes to fine. Typically, the notice will be sent by the association’s management company, but it can be sent directly by the board of directors (in the case of self-managed associations), or by the association’s attorney. The notice should inform the recipient of the alleged violation of the association’s governing documents or other rules and regulations and that their failure to comply with the governing documents has resulted in a fine being imposed. Additionally, the notice must make the recipient aware that they are entitled to the opportunity for a hearing before a committee of the association before the fine becomes final. Both condos and HOAs are required to give the recipient at least fourteen (14) days’ notice before a fine can become final.

Some associations have committees that meet on a regular basis to consider whether or not to impose a fine against a homeowner. If that is the case, the formal written notice should inform the recipient of the date, time and location of the next scheduled committee meeting and should instruct the recipient to be present at that meeting. If the next scheduled meeting is less than fourteen (14) days from the date of the notice, the notice should instruct the recipient to be present at the following meeting.

Associations also have the option of including language in the notice instructing the recipient that he or she must contact the association within a specific number of days and request

a hearing before the committee. The notice should inform the recipient that failure to request a hearing in a timely manner will result in the fine being final.

Committees

Both Condos and HOAs have specific requirements governing the membership of their fining committees. HOA fining committees must be comprised of at least three members appointed by the board of directors. Those three people cannot be “officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.” Condo committees, on the other hand, must be comprised of “other unit owners who are neither board members nor persons residing in a board member’s household.” Unlike, HOAs, there is no minimum number of board members on a condo committee. And, the qualifications to serve on a condo committee are much broader than for an HOA. Please consult our office if you have any questions or concerns about the law regarding the membership requirements of association fining committees.

Committee Hearings

The individual appearing before the committee should be permitted an opportunity to speak about why they should not be fined. Once discussion is concluded, the committee must vote on whether or not the fine should be imposed. If the committee does not agree, by majority vote, to uphold the fine, then it may not be imposed. The Condo or the HOA should then send a letter to the individual following the hearing, informing them of the outcome. The notice should also make the individual aware of the potential consequences of failure to pay the fine.

Amount of Fines

Both the Condo and HOAs statutes impose a limit on the amount of money to which a fine may accrue. The HOA statute specifically limits fines to \$1,000.00 in the aggregate *unless* the HOAs governing documents provide for a different limit. This means that HOAs are not limited by the \$1,000.00 cap and are free to set the limit of their fines higher than the statutory limit. Condos, on the other hand, are not permitted to impose fines greater than \$1,000.00 and no exception is made for higher amounts contained in their governing documents.

Collection of Fines and the Legal Process

Perhaps most important to a community association is the question of, “Once we’ve imposed fines on someone, how do we get paid?” If an individual does not voluntarily pay the fines imposed upon them, the association has the option of filing a lawsuit in court to collect payment. However, Condos and HOAs have different tools at their disposal to collect fines. Both Condos and HOAs have the power to collect a money judgment against an individual who is delinquent in the payment of fines. If successful in court, the association will obtain a final judgment requiring the individual to pay the association the fines.

HOAs, unlike Condos, are permitted to record liens against lots which have had fines imposed against them. However, HOAs fines of less than \$1,000.00 are not permitted to become liens against a lot. Just as with the collection of maintenance assessments, HOAs are permitted to file a lawsuit to foreclose the lien.

Regardless of whether an association obtains a money judgment or a final judgment of foreclosure, the association is entitled to be awarded its late fees, interest, attorney's fees and costs if it wins the lawsuit.

Conclusion

Imposing fines can be a very useful and effective way for an association to enforce its governing documents. However, each association must be aware of the procedural requirements imposed upon it by Florida law. Complying with these requirements is not exceedingly difficult but it is critically important if the association wishes to have an effective program of homeowner fining.

Please contact our office with any questions you might have about any facet of the association's authority to impose fines on homeowners.