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Aug 19 at 4:48 PM

To

Mary Ellen Reeves

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### Enforcement Procedure

Section 718.303(3), Florida Statutes, contains explicit enforcement procedures that must be followed in order to levy fines (or suspensions), which both use essentially the same procedures. It is important to note that the procedures for fines and suspensions contained in 718.303 were just amended this year to make it clear that the Board is the entity responsible for levying a fine. Below are the basic steps that must be followed in order to issue fines (or suspend use rights) for violations of the governing documents or Chapter 718.

#### Step 1: Appoint Enforcement Committee

Under the previous version of 718.303(3), the Association's Board of Directors could only propose a fine or suspension. The statute now provides that the fine may be levied by the Board, but only after it is reviewed by an "Enforcement Committee" or "Fine Committee". This committee is a special committee appointed by the Association's Board of Directors that will conduct a hearing to determine whether the fine (or suspension) is proper. Therefore, if the Board wishes to utilize fines or suspensions as enforcement tools, the Board needs to first appoint an Enforcement Committee. The Enforcement Committee should be comprised of at least three (3) members who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee... or live in the same household.

#### Step 2: Levy Fine or Suspension

If the Board believes that a violation exists, then the Board should levy a proposed fine (or suspension) against the violating Unit Owner or Occupant and direct that the Enforcement Committee (or "Fining Committee") hold a hearing to determine if a fine or suspension should be imposed. All fines levied by the Board must be reasonable, and may not exceed \$100 per violation. However, fines may be proposed for each day of a continuing violation, as long as the fine does not exceed \$1,000 per violation.

#### Step 3: Notice

The Enforcement Committee must then notify the Owner or Occupant of the violation(s) and of the proposed fine or suspension. The notice must be written and include (i) a short and plain

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#### Step 3: Notice

The Enforcement Committee must then notify the Owner or Occupant of the violation(s) and of the proposed fine or suspension. The notice must be written and include (i) a short and plain statement of the alleged violation(s); (ii) a citation to the document provisions that have been violated; (iii) the date, time and place of the hearing; and (iv) an announcement that the owner may appear at such hearing to address the issue.

#### Step 4: Hearing

At the appointed place and time, which must be at least fourteen (14) days after the Enforcement Committee gives notice as provided above, a full hearing must be held before the Enforcement Committee concerning the alleged violation(s) and the proposed fine levied and/or suspension. An Association representative, usually the manager, must present evidence reflecting that the proper notice was given to the owner and then must present the case to the Enforcement Committee. The Owner has the right to be represented by an attorney at the hearing or may represent himself or herself. Both the Association's representative and the owner have the right to present such evidence as they deem appropriate and may present and question witnesses, and the Owner may provide written argument on any issue involved. The Owner must have an opportunity at the hearing to review, challenge and respond to any material considered by the Enforcement Committee. Please also note the following:

- a. Multiple infractions by the same owner may be discussed at the same hearing.
- b. Strict rules of evidence are not required, however, the Enforcement Committee should comply with such standards that will insure due process and fair play.
- c. If the required notice is given, the failure of an owner to appear at the hearing does not impede the completion of the hearing. In other words, the hearing may occur if the owner does not attend.
- d. The hearing is considered a meeting of the Enforcement Committee, and as such, it must comply with the same requirements for meetings of the Board of Directors. That is, such hearings must be open to all the members of the association, notice of all Enforcement Committee meetings and hearings, along with an agenda therefor, must also be posted on the condominium property forty-eight (48) hours prior thereto.

#### Step 5: Enforcement Committee Decision

If, after a hearing, the Enforcement Committee does not approve a proposed levied fine or suspension by majority vote, then none shall be imposed. However, if, after a hearing, the Enforcement Committee, by majority vote, determines that the violation has occurred, then the fine or suspension levied by the Board will be imposed. For multiple violations, the Enforcement Committee may approve some fines or suspensions and refuse to approve others.

The written decision of the Fining Committee must also be submitted to the unit owner within a reasonable time after the hearing.

#### Step 6: Enforcement of Fines and Suspensions

Any fine shall be due and payable within fourteen (14) days after the Enforcement Committee issues written notice of the imposition of the proposed fine. A lien may not be imposed for unpaid fines. If the fine goes unpaid and the Association wishes to collect the money owed, it may file a legal action (likely in small claims court) to recover the fine.

Similarly, any suspension shall be in effect fourteen (14) days after the Enforcement Committee issues written approval of the suspension. If the Owner or Occupant fails to abide by the imposed suspension, the Association may file a lawsuit for injunctive relief compelling compliance with the imposed suspension, in addition to compelling compliance with the governing documents.

Even though unpaid fines may not be converted into liens, we have found this remedy to be effective when properly exercised. It is also important to remember that the main objective of levying fines and imposing suspensions is to compel compliance with the governing documents. Oftentimes, the mere threat of a fine or a suspension can achieve this goal.

Let me know if you or the Board have any questions regarding levying fines (or suspensions) or setting up an "Enforcement Committee". I will be happy to assist you in setting up such a committee if the Board decides it would like to do so and would like assistance.

In addition to the fines, the Association may also seek to have removed by first filing an arbitration petition with the Division of Florida Condominiums, Timeshares, and Mobile Homes. You can file for arbitration after you issue a fine or apart from a fine. You would need to provide one more notice stating that the Association will be filing for arbitration if the unit is not into compliance. I can help with this as well or provide a more detailed explanation of the process if you have questions.

We are working on the other issues. I will give you an update when I have one.

Thank you.

Jeff