

VERONA RESERVE COMMUNITY ASSOCIATION, INC.

Procedures to Levy and Impose Fines or Suspensions for Violations of Governing Documents

The Law: Fining authority is governed by Section 720.305, Florida Statutes, and Section 6(j) of the Bylaws, which provides that a homeowner association may levy a fine against a member for violations of the Declaration, Bylaws, or rules and regulations. (www.leg.state.fl.us).

A fine may not exceed \$100.00 per violation, provided that fine may be levied on a per-diem basis for a continuing violation with a maximum aggregate fine of \$2,500.00.

The same statute and Section 6(k) of the Bylaws authorizes the Association to suspend, for a reasonable period of time, the right of an owner, or an owner's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the lot or its occupant, licensee, or invitee to comply with any provision of the Declaration, Bylaws, or rules and regulations. A suspension may not apply to that portion of common areas used to provide pedestrian and vehicular access or utility service to the lot, or the right to park vehicles. (Note that suspensions may also be imposed if an owner is more than 90 days delinquent in the payment of a monetary obligation to the Association, which is different and does not require the due process hearing discussed below).

Levy of Fine or Suspension: The Board has the authority to levy a fine for a violation, and an additional fine for each day of a continuing violation, or to suspend use rights. The levy of a fine(s) or suspension should be included as an agenda item and addressed at an open Board meeting for which notice is posted no less than 48 hours in advance. It is not necessary to provide notice to the owner but it is recommended as the Board meeting may be an opportunity to resolve the matter before the levy of a fine or suspension.

Imposition of Fine(s) or Suspension: After the levy of a fine or suspension at a Board meeting, the Board must permit the owner an opportunity for a hearing before an impartial Fine Review Committee before the fine or suspension may be imposed. The Board appoints the members of the Fine Review Committee, which must consist of at least three owners. Fine Review committee members may not be board members, officers, employees, or the spouse, parent, child, brother, or sister of an officer, board member or employee.

Procedure for Conducting the Hearing:

1. It is always best to determine if a violation can be remedied without punitive action. A fine may not be appropriate for a first-time violator.
2. The Board should select a date, time and place for the hearing approximately 30-45 days in advance.
3. If the Association does not have a standing Fine Review Committee, the Board should meet and duly appoint a Fine Review Committee (this should be done in advance of the fining hearing).

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4. The Board should prepare a list of alleged violations, including the nature of the alleged offenses, and the approximate dates, times, and places where same occurred. The Association should send this information (including citation to sections of the documents violated) to the alleged violator, along with notice of the date, time, and place of the fining hearing. Also, the notice should advise the alleged violator of his right to cross-examine witnesses, and other due process rights to contest the enforcement.
5. The next step is to mail or deliver the notice of the fining hearing on all record owners of the lot according to the deed and, if applicable, to any occupant, tenant, or invitee of the parcel owner. If a fine is proposed, the notice must be mailed or delivered to the alleged violator at least 14 days in advance of the hearing by regular first-class postal delivery. A hearing must be held within 90 days after issuance of the notice.
6. At least 48 hours prior to the fining hearing, a notice of the hearing must be posted at the community. The fining hearing is open to owner observation and comments.
7. A quorum of the Fine Review Committee must be present at the hearing. The Fine Review Committee should appoint a chair and conduct the meeting. A representative of the Association should present its case to support the alleged violations and the need to levy a fine or suspension. The alleged violator is permitted to cross-examine witnesses, ask questions, call witnesses, introduce documents, and otherwise defend the allegations. The members of the Fine Review Committee may ask questions of the Board representative, the alleged violator, or any of the persons who presented evidence or testified. The Fine Review Committee should specifically ask the alleged violator if he or she desires to present further testimony or evidence. Once the evidentiary portion of the hearing is concluded, the Fine Review Committee should vote on the fine or suspension. The Fine Review Committee, by majority vote, must agree with the fine or suspension. In other words, it has a "veto" right over the Board's decision. The Fine Review Committee does not have the authority to increase or decrease the proposed fine or suspension: it only has authority to decide if the fine(s) or suspension levied by the Board may be imposed.
8. If a violation has been cured before the hearing or in the manner specified in the written notice required, a fine or suspension may not be imposed.
9. If a fine has been levied and approved by the Fine Review Committee, within 7 days after the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, tenant, or invitee of the parcel owner, of the committee's findings including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, tenant, or invitee of the parcel owner may cure the

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violation, or fulfill a suspension, or the date by which a fine must be paid. Said date must be at least 30 days after delivery of the written notice required

10. Once a fine is levied, if not paid, if the total amount of the fine is less than \$1,000.00, the fine must be collected through filing a small claims court action. If the total amount of the fine is \$1,000.00 or more, the Association has a right to file a lien against the Lot owned by the violating owner and/or may seek to obtain a personal money judgment.
11. If the Association is required to take the owner to court to recover a fine, the Association is also entitled to recover reasonable attorney's fees and costs that it incurs in collecting the fine, however attorney fees and costs may not begin to accrue until after the date noticed for payment under paragraph 9. Although the amount of attorney's fees may often exceed the amount of the fine, the court is obligated by law to award a reasonable attorney's fee to the prevailing party.