

TILDEN & PROHIDNEY, P.L.

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MEMORANDUM

To: Board of Directors (the “Board”), Harrison Ranch Homeowners’ Association, Inc. (the “Association”)
From: Tilden & Prohidney, P.L.
Date: June 28, 2024
Subject: New Laws Impacting Harrison Ranch

Please accept this Memorandum as a response to your request for a legal opinion from our firm regarding the newly enacted laws that impact Harrison Ranch, including:

- (1) New Requirements for Harrison Ranch
 - I. Hurricane Protection Measures
 - II. Education Requirements
 - III. Levying Fines Procedure – Changes
 - IV. Restrictions on Fines
 - V. Financial Matters/Disclosures
 - VI. Record Access
 - VII. Officers and Directors
 - VIII. Record Keeping
 - IX. Simple Interest
- (2) New Laws that Likely Do Not Apply to Harrison Ranch
 - I. Section 720.3075 Prohibited Clauses
 - II. Section 720.3035 Architectural control covenants
- (3) Action Items

(1) NEW REQUIREMENTS

I. Hurricane Protection Measures

- a. New requirement in the law that the Association must adopt hurricane protection specifications that apply to each parcel governed by the Association.
- b. Hurricane protection specifications include roof systems, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks, and other hurricane protection products. The Board may determine what is relevant to the specifications (the Board, and/or ARB, may set the standards based on the design/building schemes for the community).

II. Section 720.3033 Education and Ethical Requirements

- a. All newly elected Directors must complete department-approved (DBPR) education requirements and receive Board Certification. This includes training relating to financial literacy, transparency, recordkeeping, levying of fines, and requirements for running meetings. The certification requirement must take place within 90 days of being elected. The DBPR will issue rules regarding current/existing directors, which will likely allow the certification course to be completed after the next election.
- b. Directors must attend a Board Certification course (typically a 2-hour course) every 4 years.
- c. Annual continuing education requirements must be completed by all Directors. Communities with less than 2,500 parcels must complete four hours of continuing education requirements annually.
- d. Provides that any officer, director, or manager who knowingly solicits, offers to accept, or accepts a kickback is guilty of a third-degree felony.
- e. Clarifies that if a Director or Officer is removed due to being charged by information or indictment for specified crimes, a vacancy is declared. Pursuant to Fla. Stat. Sec. 720.3033(b), the Board is obligated to fill the vacancy.

III. Section 720.305 Levying Fines (Changes)

- a. Requires that a hearing before the fining/hearing/covenants committee must be held within 90 days after the 14-day notice of right to a hearing is sent to the parcel owner.
- b. Allows hearings by telephone or other electronic means, which hearing notice should provide log in credentials (owner must be allowed to attend telephonically/electronically upon request).
- c. Requires that within 7 days after the hearing, the committee must provide notice to the owner and, if applicable, to the tenant of the committee's findings, including fines and suspensions that were approved/rejected and how to cure the violation, if applicable, "or fulfill a suspension, or the date by which fine must be paid."
- d. Prohibits a fine or suspension from being imposed if the violation is cured before the hearing.
- e. Requires the committee to set a due date for the fine at least 30 days after delivery of notice of confirmed fine to the owner (see c. above).
- f. Prohibits imposition of attorneys' fees or costs against owner based on actions taken in a fining matter before the date for fine to be paid (allows recovery of fees and costs beginning after the due date of the fine).
- g. We have included a flow chart of the new fining procedure to simplify the process.

IV. Restrictions on Fines*

- a. Associations may not issue fines to owners who leave trash receptacles out within 24 hours prior to, or after, collection.

* These may not apply to the Association, based on the Constitutional analysis provided in Section (2) below.

- b. Owners may not be fined for leaving holiday lights and decorations up without notice and one week to cure the violation.
- c. Fines may not be issued to owners who install vegetable gardens or clotheslines which are not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course.

V. Section 720.303 Amendments - Financial Matters/Disclosures

- a. Prohibits the Association from electing to prepare a financial statement in lieu of an audited financial statement in consecutive years (although the members could authorize the Association to prepare or obtain a less rigorous financial statement than otherwise required, the reduction is only permitted every other year).
- b. The Association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expenses.
- c. Allows an owner to make a written request for a detailed accounting of any amounts owed to the Association, which accounting must be provided within 15 business days. Should the Association fail to provide this, the Board forfeits any outstanding fine which is more than 30 days past due and for which the Association has not given prior written notice of the imposition of fines (owner can only make one request every 90 days).

VI. Section 720.303 Record Access

- a. Directors who knowingly or willfully violate the Association's obligation to make official records available may be guilty of a second-degree misdemeanor.
- b. Directors who knowingly or willfully destroy or refuse to provide records may be guilty of first-degree misdemeanor.
- c. Any person who knowingly or willfully fails to produce Association records with the intent to avoid detection, arrest, trial, or punishment commits a third-degree felony.
- d. Requires the Association to produce records to law enforcement within 5 days of receipt of a subpoena, unless a later date is provided in the subpoena. Requires an Association to "assist a law enforcement agency with its investigation to the extent permissible by law."

VII. Section 720.303 Officers and Directors

- a. Provides that a director who knowingly, willfully, and repeatedly violates the Association's obligation to make official records available for inspection with intent to harm the Association or any member is guilty of a second-degree misdemeanor.
- b. Provides that any person who knowingly and intentionally destroys accounting records or fails to create or maintain required accounting records with intent to harm the Association or member is guilty of a first-degree misdemeanor.

- c. Provides that any person who willfully and knowingly fails to produce Association records with intent to avoid detection, arrest, trial, or punishment commits third-degree felony.

VIII. Section 720.303 Record Keeping

- a. Official Records must be kept for a minimum of 7 years, but the governing documents may require more (or the Board could adopt a longer policy).
- b. Associations with 100 parcels or more must post certain official records on a website created for the Association or available through a mobile application by January 1, 2025 (redacted as necessary). The website must contain a subpage or portal that is password protected and inaccessible to the general public.
- c. The required records are:
 - i. Declaration of covenants and amendments
 - ii. Articles of Incorporation & amendments
 - iii. Bylaws and amendments
 - iv. Current rules
 - v. Contracts and bids
 - vi. Annual budget
 - vii. Financial reports
 - viii. Insurance policies
 - ix. Director certifications
 - x. All contracts, notices, minutes, and other documents related thereto constituting a conflict of interest (i.e., contracts with directors, their family, or entities in which they have an interest)
 - xi. Member Meeting notices, agenda, and any documents to be considered linked conspicuously on the homepage
 - xii. Board meeting notices and enclosures.
- d. Requires the Association to adopt written rules governing method and time period for retaining official records and post the rules/policy on its website.

IX. Section 720.3085(3)

- a. Clarifies that simple interest accrues at a maximum rate of 18% and cannot be compounded (i.e., interest on interest).

(2) NEW LAWS THAT LIKELY DO NOT APPLY TO THE ASSOCIATION

Pursuant to Section 720.302(2), Florida Statutes, “certain contract rights have been created for the benefit of homeowners’ associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.” The Florida constitution broadly prohibits laws from retroactively impairing substantive contractual rights. Fla. Const. art. I, §X. A statute impairs a declaration if it creates a new obligation, imposes

a new penalty, or diminishes a vested right. *See, e.g., Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 499 (Fla. 1999).

While the application of these constitutional issues can be confusing, Florida courts and arbitrators have helped clarify the analysis. In determining whether a statute may be applied retroactively to an existing declaration, the first determination must be whether the statute is *purely* procedural in nature, or rather, it creates, alters, or impairs substantive rights. If a statute is purely procedural, i.e., it does not affect any party's rights, the statute will apply to existing declarations in all instances. For example, if the declaration says that all election ballots must be printed on green paper and a new statute requires that the ballots be printed on yellow paper, that statute would be purely procedural and, therefore, apply uniformly to all associations. Alternatively, if the new statute requires that the ballots be printed on yellow paper *and* provides that lot owners who are delinquent in payment of their assessments cannot vote on an issue before the membership, the statute would be considered substantive, rather than purely procedural. Arbitrators have also ruled that recent changes to the statutes for matters such as board term limits, the ability of a certain limited class of members to elect the majority of the board, and suspension of a member's right to utilize common areas were all substantive changes, and not merely procedural in nature.

Based on the above analysis, the following newly enacted laws likely do not apply to the Association.

I. Section 720.3075 Prohibited Clauses

- a. Associations cannot prohibit owners or guests from keeping parked cars in the owner's driveways.
- b. Associations cannot prohibit work vehicles from being parked in driveways. This does not apply to commercial motor vehicles (specifically defined in the statute).
- c. Associations cannot limit an owner's decision to hire a contractor that is not listed by the association as a preferred contractor. Additionally, associations cannot demand proof of the contractor's professional or occupational license.
- d. Associations cannot prohibit first responders from parking an area where the first responder has a right to be including public roads (Section 720.318).

II. Section 720.3035 Architectural control covenants

- a. The Association or ARC must reasonably and equitably apply and enforce all standards (this should always be done, notwithstanding the new law).
- b. Association and architectural committees cannot "limit or place requirements on the interior of a structure that is not visible from the parcel's frontage or an adjacent parcel, an adjacent common area, or a community golf course."
- c. Association and architectural committees cannot require approval of plans and specifications for A/C, refrigerator, heating, or ventilation systems if not visible from lot frontage, neighboring parcel, common area, or golf course

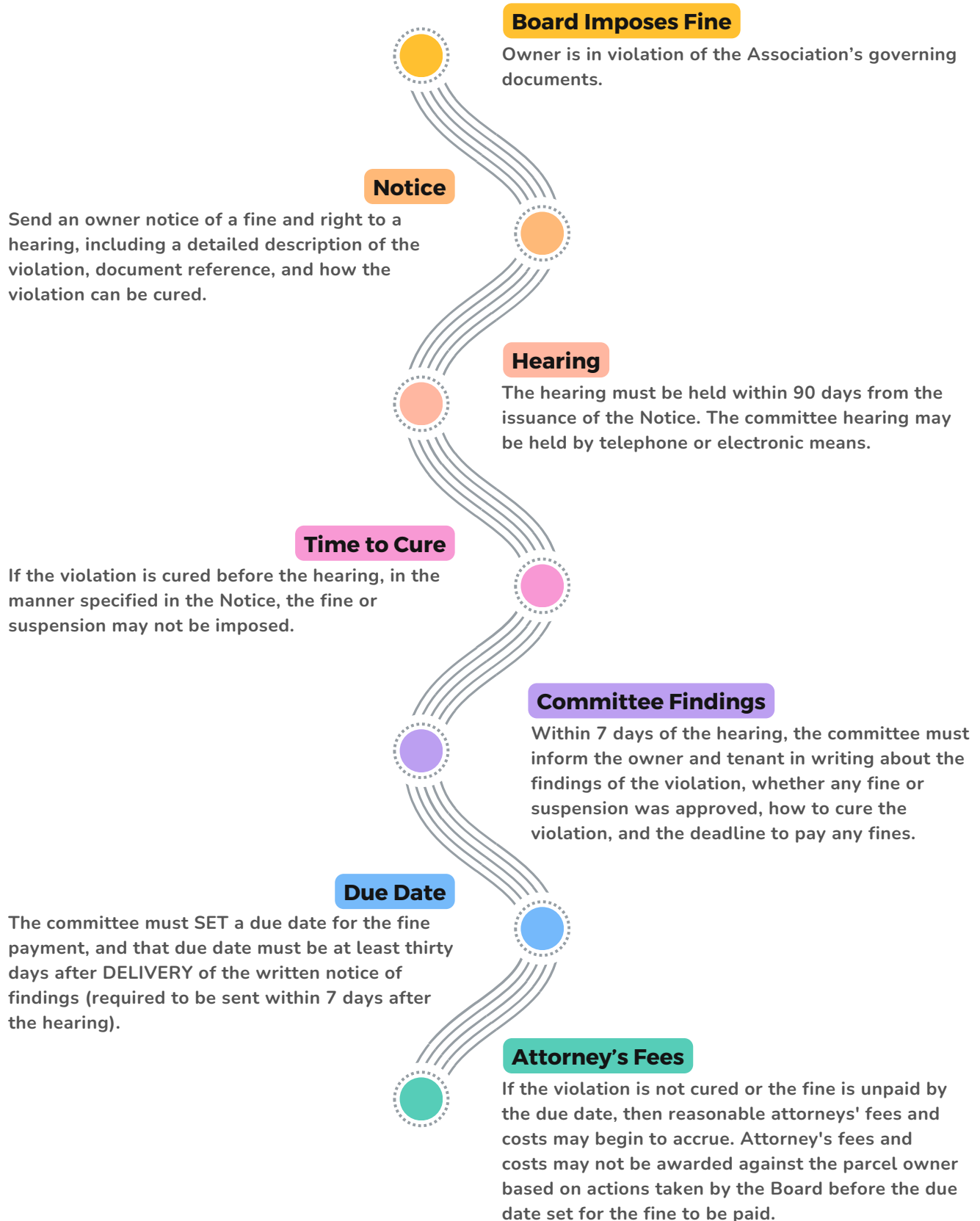
- d. Any denial of a modification or project must include written notice to the parcel owner stating the rule/covenant on which the Association or committee relied on in issuing a denial.

(3) **ACTION ITEMS**

Based on these statutory amendments, Harrison Ranch should consider the following action items:

1. Review Board certification records and develop schedule for compliance for each director.
2. Review fining procedures and forms for compliance with new requirements.
3. No later than **January 1, 2025**, (1) adopt a policy governing posting of records to the website, and (2) establish and post records to the website.
4. Ensure that the Association does not use debit cards.
5. Review hurricane protection specifications and adopt a policy, if necessary (if there is not already a clear policy/standards).
6. Adopt written rules governing method and time period for retaining official records and, prior to January 1, 2025, post the rules/policy on its website.
7. Adopt a policy for handling owner accounting requests.

NEW HOA FINE PROCESS



From: [Michael Prohidney](#)
To: [Matthew Duncan](#)
Subject: Re: [EXTERNAL]Re: Collections update
Date: Wednesday, July 3, 2024 3:57:30 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Good Afternoon Matt:

The street parking would be similar to the driveway “work” truck parking – the new law cannot impair the Association’s right to enforce its documents as written. For street parking at Harrison Ranch, it is somewhat tricky, as the Association only has the right to prevent the owners and their families, invitees, etc. from parking on the street because they agreed to those terms in the Declaration. So, if it is an owner who consistently parks in the street, that is easy; however, if we cannot prove who the street vehicles belong to (and who invited them), we cannot stop the “public” from parking in the public streets.

Make sense? Let me know if you have any additional questions. Otherwise, have a great 4th!

Michael J. Prohidney
Attorney at Law

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From: Matthew Duncan <MDuncan@rizzetta.com>
Date: Wednesday, July 3, 2024 at 10:01 AM
To: Michael Prohidney <michael@tildenprohidney.com>
Subject: RE: [EXTERNAL]Re: Collections update

Michael, good morning.

I read your memo. I don't see where you addressed the section on street parking. Since our roads are maintained by the county, are we still able to enforce no street parking?

Thank you.

Have a great 4th.

Matt Duncan, LCAM
Community Association Manager

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From: Michael Prohidney <michael@tildenprohidney.com>
Sent: Friday, June 28, 2024 2:44 PM
To: Matthew Duncan <MDuncan@rizzetta.com>
Subject: [EXTERNAL]Re: Collections update

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Good Friday Afternoon Matt:

As you know, there are several new HOA laws that go into effect next week (July 1). Attached please find the memorandum explaining the changes that impact Harrison Ranch. Please let me know if you have any questions.

Have a great weekend!

Michael J. Prohidney
Attorney at Law

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From: Matthew Duncan <MDuncan@rizzetta.com>
Date: Monday, June 24, 2024 at 9:57 AM
To: Michael Prohidney <michael@tildenprohidney.com>
Subject: Collections update

Michael,

Good morning. The monthly board meeting is tomorrow evening. Any updates on collections? Also, did you get my last message about changes to 720 taking effect on July 1?

Thanks.

Matt Duncan, LCAM
Community Association Manager

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