

WINDOVER FARMS OF MELBOURNE

FINES AND SUSPENSION OF USE RIGHTS POWER AND STATUTORY PROVISIONS AND RULES FOR IMPOSITION OF SAME

A. SOURCE OF POWER TO FINE AND SUSPEND:

The power to fine and suspend rights is found in the Florida Statutes: Subsection 720.305 (2) as follows:

(2) The association may levy reasonable fines. A fine may not exceed \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

B. APPOINTMENT OF THE "FINE REVIEW COMMITTEE"

Except for the non-payment of assessments and other charges as discussed below, pursuant to Subsection 720.305(2), the Board of Directors shall appoint a committee to be known as the "Fine Review Committee". This committee shall conduct hearings to determine if fines and/or suspensions should be confirmed or rejected for alleged violations of the Restrictions.

The operation of the Fine Review Committee shall be in compliance with the rules provided below.

C. RULES FOR THE IMPOSITION OF SUSPENSIONS AND FINES BY FINE REVIEW COMMITTEE

Except for the non-payment of assessments and other charges as discussed below, the rules, which shall be followed for the imposition of suspensions and fines if possible, are:

1. ACTIONS BY THE BOARD OF DIRECTORS

- a. To the extent possible, no suspensions or fines should be imposed until after the Owner violating the Restrictions has been notified in writing of the violation and given a reasonable opportunity to cure the same.
- b. As to each possible suspension or fining event the Board shall gather, at minimum, the following information:
 - i. The name of the owner/violator;
 - ii. The address and legal description of the infraction location.
 - iii. A brief description of the infraction, along with the citation of the section of the appropriate document that has been violated.
 - iv. Any other information deemed important by the Board, such as photographs.
- c. If the alleged violator is involved in multiple infractions, then the Board may consolidate all information into one report.
- d. At a duly constituted Board meeting the Board shall review the data outlined above.
- e. If, at the conclusion of that review the Board believes that the infraction exists, then the Board shall propose that a suspension(s) and/or fine(s), be imposed against the violating party and shall direct that the Fine Review Committee hold a hearing to determine if a suspension(s) and/or fine(s) should be confirmed or rejected. Additional provisions concerning the power of the Board are as follows:
 - i. The Board may not propose a fine in excess of \$100.00 per violation. However, for violations of a continuing nature, such fine may be proposed on the basis of each day of such continuing violation as long as such proposed fine does not exceed \$1,000.00 in the aggregate. A fine may be levied for EACH day of a continuing violation provided that the HOA has given at least one notice to the homeowner and an opportunity for a hearing. The notice for a hearing must be sent 14 days prior to the imposition of the fine.
 - ii. There is no statutory or document limit on the length of a suspension except that may be for “a reasonable period of time” provided however that such suspension may not impair the right of an owner or tenant of a parcel to have vehicular access and pedestrian ingress to and egress from the

parcel, including but not limited to, the right to park.

- iii. The Board may propose a fine or a suspension or both a fine and a suspension for each violation.
- iv. Because the above suspensions and fines are based on individual infractions, the Board may propose multiple suspensions and fines if multiple infractions are found to exist.
- v. The Board reserves the right, but not the duty to prepare a schedule of suspensions and fines for particular violations.
- vi. The Board also reserves the right, but not the duty, to propose suspensions and fines and then suspend the same upon condition of compliance or because compliance had occurred prior to the presentation.

2. ACTIONS BY THE FINE REVIEW COMMITTEE

- a. The Fine Review Committee shall then notify the Owner and all others against whom the fine is sought in writing of the alleged infraction(s) and of the proposed suspension(s) and/or fine(s). It shall also notify the Owner and all others against whom the fine is sought that a hearing will be held concerning the same. The notice shall include the alleged infraction(s), the date, time and place that the hearing will be held and an announcement that the Owner and all others against whom the fine is sought may appear at such hearing to address the issue. **The notice shall be served on the Owner and all others against whom the fine is sought by certified and regular mail at least fourteen (14) days prior to such hearing before the Fine Review Committee.** Service shall be completed upon the depositing of the notice in an official postal depository, postage prepaid.
- b. At the appointed place and time, a hearing will be held before the Fine Review Committee concerning the alleged infraction(s) and the proposed suspension(s) and/or fine(s).
- c. Multiple infractions by the same Owner or against the same tenant, guest or invitee of the Owner may be discussed at the same hearing.
- d. Strict rules of evidence shall not be required, however, the Fine Review Committee shall comply with such standards that will insure due process and fair play.
- e. The Fine Review Committee has the right to continue any hearing for such periods of time that it deems necessary in order to ensure that full information is presented upon which to make a decision. Appropriate notices of such continuances must be given to the Owner and all others against whom the fine is sought.

f. If notice is given as required above, the failure of an Owner and all others against whom the fine is sought to appear at the hearing shall in no way impede the completion of the hearing.

g. If, after a hearing, the Fine Review Committee does not approve a proposed suspension and/or fine by majority vote, then such suspension and/or fine shall not be imposed.

h. If, after a hearing, the Fine Review Committee, by majority vote, determines that the infraction or infractions has occurred, then the suspension and/or fine proposed by the Board shall be confirmed and imposed.

i. For multiple violations, the Fine Review Committee may confirm and impose some suspensions and/or fines and refuse to confirm and impose other suspensions and/or fines.

j. All decisions of the Fine Review Committee confirming and imposing suspensions and/or fines shall be final and not subject to further review or appeal by either the Association or the Owner and all others against whom the fine is sought. All decisions of the Fine Review Committee shall be reported in official minutes sent to the Board of Directors and sent to the Owner and all others against whom the fine is sought by Certified and regular mail.

3. FINAL ACTION BY BOARD OF DIRECTORS

At a Board Meeting upon receiving notification from the Fine Review Committee that a Fine or Suspension has been confirmed and imposed, the Board shall approve such action by Motion. If a fine or suspension is rejected by the committee, that decision will be approved by the Board by Motion.

D. COLLECTION OF FINES

Fines imposed hereunder shall be paid not later than five (5) days after the date of the Fine Review Committee meeting at which the fine is approved. All such fines shall be treated as an individual assessment and once the fines total \$1,000.00 in the aggregate, they shall become a lien against the property/parcel in question. Should it be necessary for the Association to employ an attorney to enforce such fine, the Association shall be entitled to recover the costs and expenses thereof from the defaulting party, together with a reasonable attorney's fee, pursuant to Section 720.305, Florida Statutes and the **WINDOVER FARMS OF MELBOURNE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**.

E. ENFORCEMENT OF SUSPENSION

The Association may enforce any suspension imposed hereunder using any and all available legal and equitable remedies. Should it be necessary for the Association to employ an attorney to enforce such suspension, the Association shall be entitled to recover the costs

and expenses thereof from the defaulting party, together with a reasonable attorney's fee, pursuant to Section 720.305, Florida Statutes and the **WINDOVER FARMS OF MELBOURNE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**.

F. FINES AND SUSPENSIONS FOR THE NON-PAYMENT OF ASSESSMENTS AND OTHER CHARGES

Notwithstanding the above, suspensions and/or fines for the non-payment of assessments and other charges may be imposed by the Board of Directors in conformance with the terms of the Declaration and amendments thereto, as well as in compliance with Section 720.305(3) through (6), Florida Statutes, and shall not be submitted to the Fine Review Committee for review and action. No such suspension or fine may be imposed until the person who is to be fined or whose use rights are to be suspended is afforded the opportunity of a hearing before the Board. Notice of such hearing shall be given in the same manner as is provided for above.