

Florida HOA Fines. Homeowner, Condo and Co-Operatives

Question: Our association tried to fine an owner who violated our rules, but decided the process was too complicated. Can you provide a step-by-step outline of how fines are issued and collected? (M.G. by e-mail)

Answer: Fines can be imposed against condominium and cooperative unit owners, occupants, licensees and invitees. The law for homeowners' associations authorizes fines against members, members' tenants, guests and invitees. Condominium and cooperative fines are capped at \$100 per day, and capped at \$1,000 for continuing violations. Homeowners' association fines may not exceed \$100 per violation unless otherwise provided in the governing documents. There is also a \$1,000 aggregate cap, but again, the governing documents may permit a greater (or lesser) aggregate fine.

This is generally how it works:

1. The board must appoint an independent committee (often called the fining committee or compliance committee). The condominium and cooperative laws only allow unit owners to be fining committee members, and they cannot be board members or live with board members. There is no ownership requirement in the homeowners' association statute. HOA fining committee members may not be officers, directors, or employees of the association, or the spouse, parent, child, brother or sister of an officer, director or employee. The homeowners' association statute requires a minimum of 3 committee members. The condominium and cooperative laws are silent. The Florida corporation law provides that any committee must have at least 2 members.
2. If a violation is to be considered for a fine, the board meets at a duly-noticed meeting, reviews the matter, and "levies" a fine if deemed appropriate.
3. After the board levies the fine, the person to be fined is then entitled to a hearing before the committee. Notice must be received at least 14 days in advance of the hearing. If the bylaws require other information to be contained in the notice, such as citation to the relevant document being violated or the proposed amount of the fine, that information needs to be included.
4. If the association does not hear from the party to be fined or the individual does not actually appear at the hearing, it is my belief that the hearing should still be held.
5. At the hearing, the committee must afford basic due process and allow the accused to be heard, state their case, and challenge evidence against them. The committee must then either "confirm" or "reject" the fine. If the committee rejects the fine, the matter is over.
6. If the committee confirms the fine, the board then "imposes" it. After the board has imposed the fine, a letter should be sent advising of the amount of the fine and the date due.

7. If the person who owes the fine does not pay, the condominium and cooperative statutes prohibit filing liens. The statute for homeowners' associations states that no fine of less than \$1,000 can be secured by a lien, presumably meaning that fines of \$1,000 or more can be subject to lien if authorized by the governing documents. In most cases, a lawsuit in small claims court is the proper venue to collect a fine. The statute for homeowners' associations provides that in any legal action to collect a fine, the prevailing party is entitled to recovery of their attorneys' fees from the non-prevailing party. While the statutes for condominiums and cooperatives do not contain the same language, it is generally believed that the generic provisions of those statutes allow for the recovery of attorneys' fees for legal actions brought under the statute entitle the prevailing party to attorneys' fees. Fines are "monetary obligations" and can result in the suspension of voting rights and disqualification from board service.