

**PROCEDURES TO LEVY AND IMPOSE FINES OR SUSPENSIONS
FOR VIOLATIONS OF GOVERNING DOCUMENTS**

VINTAGE GRAND CONDOMINIUM ASSOCIATION, INC.

The Law

Fining authority is governed by Section 718.303(3), Florida Statutes, and Section 18.3 of the Declaration of Condominium (Declaration), which provides that the Association may levy a fine against a member for violations of the Declaration, Bylaws, or rules and regulations. (If you do not have a copy of the statute, the statute can be reviewed and downloaded from the website of the Florida Legislature: 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. The maximum aggregate fine of \$1,000.00.

The same statute authorizes an association to suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use common elements and facilities for the failure of the owner of the unit 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 elements used to provide access or utility service to the unit, parking spaces, or to limited common elements reserved for the exclusive use of the unit. (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 a 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 or Suspension

After the levy of a fine or suspension, the Board must permit the unit owner an opportunity for a hearing before an impartial Hearing Committee before imposing the fine or suspension. The Board appoints the members of the Hearing Committee, which must consist of at least three unit owners. Hearing 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 away.
3. If the Association does not have a standing Hearing Committee, the Board should meet and duly appoint a Hearing Committee (this should be done in advance of the fining hearing).

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, present witnesses and otherwise contest the enforcement.
5. The next step is to deliver or “serve” the notice of fining hearing on all record owners of the unit according to the deed. If certified mail does not come back as claimed, personal delivery is preferable. The notice must be given to the alleged violator at least 14 days in advance of the hearing. If the unit is rented, you may but are not obligated to provide a copy of the notice to the tenant.
6. At least 48 hours prior to the fining hearing, a notice of the hearing must be posted in the statutorily prescribed location. The fining hearing is open to unit owner observation and comments.
7. A quorum of the Hearing Committee must be present at the hearing. The Hearing 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 Hearing Committee may ask questions of either the Board representative or the alleged violator, or any of the persons who presented evidence or testified. The Hearing 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 Hearing Committee should vote on the fine or suspension. The Hearing 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 Hearing 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 fine has been levied and approved by the Hearing Committee, the fine shall be due five (5) days after the date of the Hearing Committee meeting at which the fine was imposed. Notice of the levy and due date of the fine shall be reduced to writing and delivered to the owners of record.
9. If a suspension has been approved by the Hearing Committee, the terms and length of the suspension should be reduced to writing and transmitted to the owners of record, and in cases where tenant/guest use rights are also suspended, also to those persons.
10. Once a fine is levied, if not paid, it must be collected through filing a small claims court action, since a fine cannot become a lien against the unit.
11. If the Association is required to take the unit owner to court to recover a fine, the Association is also entitled to recover the attorney’s fees that it incurs in collecting the fine. 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.