

Enforcing Your Governing Docs

Presented by: Nicole R. Kurtz, Esq. & Barbara Alvarez -Sanabria, LCAM



In collaboration with:



PRESENTERS

SIEGFRIED | RIVERA



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Barbara Alvarez-Sanabria
Vesta Property Services

- Joined the firm in 2014
- Practices community association law
- Frequent lecturer & writer on community association - related topics

- Worked in community association management since 2008
- General Manager of the Southeast Florida region
- Active member of the Community Association Institute's Southeast Florida chapter

INTRODUCTION

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CONDOMINIUMS: 718.303(1)

Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.
- (c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.
- (d) Any director who willfully and knowingly fails to comply with these provisions.
- (e) Any tenant leasing a unit, and any other invitee occupying a unit.



INTRODUCTION

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HOAS: 720.305(1)

Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.



FINES



718.303 (3),(4),(5), (6) AND 720.305, FLORIDA STATUTES ARE NEARLY IDENTICAL.

- The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.
- A fine may not become a lien against a unit.
- A fine of less than \$1,000 may not become a lien against a parcel.
- A fine may be levied for each day of the violation. Cannot exceed \$100 per violation or \$1,000 in the aggregate.
- A 14 days' written notice and opportunity for a hearing before a fining committee should be provided.



FINING COMMITTEE

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- Must consist 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.
- The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.
- If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed.
- If the proposed fine or suspension 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 unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.



SUSPENSIONS

- Association may suspend, for a reasonable period of time, the right of an owner, or a tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.
- Cannot suspend rights to common elements needed to access the property, utility services provided to the unit, parking spaces, or elevators.
- 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.
- May suspend the voting rights of an owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the owner/member 30 days before such suspension takes effect.
- All suspensions imposed due to delinquency must be approved at a properly noticed board meeting.



ALTERNATIVE DISPUTE RESOLUTION

Methods

- Mediation
- Arbitration

Deciding NOT to Sue

- Waiver
- Estoppel

Attorney's Fees

- Prevailing party

What is selective enforcement ?





What does
"grandfathering" mean?



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Q&A

SESSION

GET IN TOUCH WITH US!

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