

OBSERVATION POINTE APPEAL OF FINES

A member of the Observation Pointe Homeowners Association (HOA) may appeal a fine levied by the HOA board of directors against that member or that member's tenant, guest, or invitee for the failure of the member, the member's tenant, licensee, or invitee to comply with any provision of the Observation Pointe governing documents.

AUTHORITY

- §720.305(2)(b), Florida Statutes Obligations of members; levy of fines ¹
- Article 24, Observation Pointe Covenants and Restrictions ("Covenants") ²

DEFINITIONS

- Member. The record owner, according to the Public Records of Leon County, Florida, of a lot within the Observation Pointe subdivision. "Record owner" shall not refer to the mortgagee (lender) unless such mortgagee has acquired title pursuant to foreclosure. (See §2.11, Covenants)
- Governing documents. Chapter 720, Florida Statutes; Observation Pointe Covenants and Restrictions (2007 and 2009), Observation Pointe Bylaws; Rules and Procedures adopted by the HOA board of directors and the Architectural Control Committee.

NOTICE AND OPPORTUNITY TO BE HEARD

- A fine may not be imposed by the HOA without at least 14 days written notice to the person sought to be fined. The HOA must provide notice of such fine by mail or hand delivery to the member and, if applicable, to any tenant, licensee, or invitee of the member.
- The notice must inform the member that they have 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.

COMMITTEE APPOINTMENT; MEMBERSHIP

- The committee is appointed by the HOA board of directors. The board will designate the committee chair.
- 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.

ROLE OF THE COMMITTEE

- The role of the committee is limited to determining whether to confirm or reject the fine levied by the board. It may not change the fine, or recommend changing the fine. The committee is otherwise bound by the findings and action of the board.
- If the committee, by majority vote, does not approve a proposed fine, it may not be imposed.
- The committee, like the board, must comply with all governing documents.

APPEAL PROCEDURE

1. The member sought to be fined may request a hearing, in writing, within **14 days** of receipt of notice of the fine. Requests for appeal filed after 14 days of receipt of notice may not be heard, except for good cause shown to the board. Postmark or electronic receipt will be adequate proof of timely filing an appeal.
2. Requests for appeal must be in writing, and must be sent to the property manager at the address given on the notice of fine. Acceptable methods for submitting a written request for appeal include:
 - a. Using the "Contact" form on the Observation Pointe website at www.observationpointe.com
 - b. Letter postmarked within 14 days of receipt of the notice of fine, addressed to the property manager at the address given in the notice
 - c. Email to the property manager at *observationpointehoa@gmail.com*
3. Hearings on appeals are open to all members, interested parties, witnesses and counsel; however they are not published for the general membership.
4. The property manager will attend the hearing and take notes.
5. Appeals must be limited to the reason for which the fine is imposed.
6. The appellant will be given 10 minutes to address the committee, with an additional 2 minutes for each witness. The committee shall hear other interested persons present, and may ask relevant questions.
7. At the conclusion of questioning, the appellant will be provided three minutes for a closing statement to the committee.
8. The hearing will be adjourned.
9. The committee's discussion is closed and only committee members and the property manager will be present.
10. The decision of the committee is final.
11. The committee has up to 10 days from the hearing date to present its decision to the property manager.
12. The property manager will immediately notify the board and the appellant of the committee's decision.
13. If the committee, by majority vote, finds the appeal is valid, the fine may not be imposed.
14. If the committee, by majority vote, finds the appeal is not valid, the fine will be imposed the day after the decision is provided to the board and the appellant.
15. Costs (i.e., copies, supplies, postage, etc.) associated with the appeal will be reimbursed to the HOA by the appellant if the appeal is found not to be valid

October 11, 2016

¹ **§720.305, Florida Statutes Obligations of members; levy of fines**

(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.

(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 non-prevailing party as determined by the court.

(b) A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person 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, it 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 board of administration imposes a fine or suspension, 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.

² **Article 24, Observation Pointe Covenants and Restrictions Notice of Rules to Guests**

All licensees, guests, invitees and tenants of each and every lot owner shall be subject to the provisions of this Declaration and of the Rules and Regulations of the Association governing the use and enjoyment of all lands contained within the Subdivision, and they shall abide by such Covenants, Restrictions, and Rules and Regulations.

Unanimously approved by the Observation Pointe Board of Directors on October 11, 2016