

Observation Pointe Homeowners Association Policy on Gaining Compliance with Violations of the Covenants and Restrictions

The authority for the Observation Pointe Homeowners Association (HOA) to gain compliance with violations of the Observation Pointe Covenants and Restrictions resides in section 720.305 of Florida Statutes, Article 34 of the Observation Pointe Covenants, ¹ and other provisions in the Covenants and Restrictions.

- Common violations:
 - Yard maintenance
 - Structure maintenance
 - Parking on the street

- Current practice
 - The property manager accepts complaints from any source and validates by personal inspection or photograph.
 - 1st letter -- The property manager (after coordinating with HOA president) sends a courtesy letter requesting “prompt attention.”
 - 2nd letter -- The property manager (after coordinating with HOA president) sends a letter informing the owner and occupant:
 - Section 720.305(2), Florida Statutes, allows HOAs to levy a fine of *up to* \$100 per day (\$1,000 maximum). ²
 - Sets compliance date
 - May be referred to HOA attorney for legal action
 - Prevailing party may get attorneys fees and costs
 - Call the property manager with questions
 - 3^d letter informs the owner what action the HOA will take

- What actions are available to the HOA if there is no compliance after the second letter?
 - Levy a fine per day of violation
 - If so, how much? (See Recommendation, below)
 - For exterior maintenance, HOA may provide the maintenance or repairs and charge the owner. (Article Four, Covenants) ³

- Requirements of each course of action
 - Fines (*endnotes 2 and 4*)
 - Require board action
 - Require 14 days notice ⁴
 - Notice must offer an opportunity to be heard by a committee of 3 members of the HOA
 - 3 members are appointed by the board
 - Can't be officers, directors, employees or family members

- Role of the committee is to confirm or reject the fine levied; can't modify the fine
 - If committee rejects, the fine can't be imposed
- Fine can't exceed \$1,000
- A fine of *less than* \$1,000 can't become a lien against the parcel

- Entering the property and doing the repair/maintenance (*endnote 3*)
 - Requires board action
 - Requires 10 days notice
 - Could easily lead to a confrontation
 - May be appropriate if owner away for an extended period of time or the property has been vacated

- What happens if the owner doesn't pay the fine or the repair/maintenance costs?
 - For amounts less than \$1,000 –
 - Can't file a lien, but can go to small claims court
 - Easy to file small claim; doesn't require an attorney
 - Can recover costs of filing and service of process
 - All small claims must be mediated (free service)
 - Board would give the HOA spokesperson guidance on how to settle
 - Recover actual costs
 - Amount of fine negotiable
 - Require compliance for a period of time before dismissal of claim
 - For fines of \$1,000 or more
 - Small claims court (up to \$5,000), or
 - Place lien on the house
 - We don't recover until the house is sold
 - Our lien is subordinate to the mortgage
 - Owner could be upside down on the mortgage.
 - Would require future action

RECOMMENDATION:

- That the board continue the current practice of progressive letter writing (1st, 2nd, etc.) described above for violations of the covenants and rules of the association;
- That action by the board be required before letter #3 can be sent, to include referral to local government for resolution, if appropriate,
- That such letter provide notice and an opportunity to be heard, as required by the covenants and/or Florida Statutes;
- If a fine is levied by the board, that **\$25 per day** for each day of a continuing violation be imposed;

October 11, 2016

- That the property manager notify the board whenever a lot owner owes **\$500** to the association, and
- That the board will promptly schedule a meeting to discuss the same, and determine the appropriate course of action.

The recommendation was unanimously adopted by the board on October 11, 2016.

¹ ARTICLE THIRTY-FOUR: Enforcement of Obligations

Each Owner shall be governed by and shall comply with the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and any rule or regulation adopted by the Association. Upon failure of an Owner to so comply, the Association shall have the right to institute legal proceedings at law for damages or in equity to enforce the terms of these provisions against the offending Owner, and the prevailing party shall be entitled to recover costs and reasonable attorney's fee. The failure of the Association to enforce any right, requirement, restriction, covenant or other provision of this Declaration, including any rule or regulation by bylaw adopted by the Association, shall not be deemed to be a waiver of the right to seek any remedy in equity or damages at law against any subsequent noncompliance.

² 720.305(2), Florida Statutes Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(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.

³ ARTICLE FOUR: Maintenance of Lots, Exterior of Homes and Association Property

Section 4.1 Structure Maintenance. Each Owner shall maintain any dwelling and accessory structures and all improvements thereon constructed upon an individual Lot in good state of repair and in an aesthetically pleasing manner consistent with the character and setting of the Subdivision as developed. Without limitation, each Owner shall specifically maintain in a safe condition and proper state of repair and maintenance the roof, windows, painting and staining of exterior walls and trim, steps, porches and any permitted out buildings, yards and driveways. The Association may, by rules duly adopted, reasonably regulate the use of all Association lands and property; provided, however, that any such rule of the Association may not be less restrictive than any covenant set forth herein. If an Owner shall fail to maintain or make repairs or replacements which are the responsibility of such Owner, then, upon a vote of a majority of the Board of Directors of the Association, and after not less than thirty (30) days notice to the Owner, the Association shall have the right (but not the obligation) to enter upon such lot and provide such maintenance or make such repairs or replacements as it deems necessary or appropriate, and the cost thereof shall be added to the assessments chargeable to such Owner and shall be payable to the Association by such Owner under such terms as the Board of Directors of the Association determines. For the purpose solely of performing the maintenance authorized by this paragraph, the Association's agents or employees shall have the right after reasonable notice to enter upon any such lot during reasonable hours.

Section 4.2 Exterior Maintenance. Each Owner shall maintain the landscaping, including the trees, shrubs and grass within the boundaries of his/her/their Lot, and the exterior of the dwelling, including any other structure, located on the Lot in a neat and attractive condition. If an Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Owner, then upon vote of a majority of the Board of Directors and after not less than ten (10) days notice to the Owner, the Association shall have the right (but not the obligation) to enter on any such Lot and provide such maintenance or make such repairs or replacements as it deems necessary or appropriate, and the cost thereof shall be payable to the Association by such Owner within ten (10) days after the delivery to the Owner of a demand for payment. Amounts Due hereunder may be enforced and collected, together with interest and attorneys' fees, in the manner assessments are enforced and collected under Article Thirty-Five. For the purpose solely of performing the maintenance authorized by this paragraph, the Association's agents and employees shall have the right, after reasonable notice to the Owner, to enter upon any such Lot between the hours of 7:00 a.m. and 6:00 p.m.

⁴ **720.305(2)(b), Florida Statutes.** 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.