

Kelly Pointe HOA Fining

Purpose: To outline structure for creation and operation of the Kelly Pointe HOA Fining Committee pursuant to Florida Statute 720.305, the text of which is copied below:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

(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.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(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 nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities 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. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A 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.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the

parcel owner, 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, the proposed fine or suspension 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 proposed fine or suspension levied by the board 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 parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A 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. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.

Committee Creation:

1. Effective immediately the Board of Directors shall appoint a Fining Committee based on the following:

- a. The Committee shall consist of three homeowners who are not officers, directors, or employees of the Kelly Pointe HOA and who are not the spouse, parent, child, or sibling of an officer, director, or employee.
- b. The appointments for the 2021-2022 annual year shall occur immediately upon passage of the proposal by the Board of Directors. subsequent appointments shall be made within 30 days of the annual meeting and shall last for a term of one year.
- c. In the event a vacancy occurs on the Committee, the Board of Directors shall make appointments necessary to fill said vacancies as quickly as possible.
- d. Members of the previous years' Fining Committee shall continue to serve until the members of the next years' Fining Committee are appointed, at which time their service shall be complete.
- e. Members of the Fining Committee may be appointed to serve sequential terms at the discretion of the Board of Directors.
- f. The new Fining Committee shall select a Chairman from among their number.

Enforcement Procedures:

1. BCM Services is charged with the routine oversight of property maintenance and compliance with the physical aspects of the Kelly Pointe Declaration of Covenants and Restrictions.
 - a. BCM Services shall follow its own process with respect to the need to notify owners of deficiencies that need to be corrected and follow through with the process up to and including correction of the deficiency.
 - b. In cases where BCM Services believes that a fine is warranted, the issue shall be referred, in writing, to the Kelly Pointe Board of Directors for review.
2. Any owner, tenant, or guest may identify a violation of the Kelly Pointe Declaration of Covenants and Restrictions.
 - a. Violations identified in this manner may be submitted either to BCM Services or directly to the Kelly Pointe Board of Directors for review.
3. Upon being made aware of a violation or deficiency through either of the methods above, the Kelly Pointe Board of Directors shall make a determination on whether the Fines Process is to be used. This determination shall be based upon the following criteria:
 - a. The applicable owner shall have been notified at least once of the violation or deficiency through a traceable method (i.e. certified letter, hand delivery etc.) and given 14 days to correct the deficiency.
 - b. The occurrence of previous instances of the same or a similar deficiency shall be considered.
 - c. The stated intentions of the owner with respect to correction of the deficiency should be considered.
4. If the Kelly Pointe Board of Directors determines that the imposition of a fine is the most appropriate method by which to address the deficiency, the following steps shall be executed:
 - a. The Board of Directors shall schedule a meeting of the Fining Committee and provide the person sought to be fined with at least 14 days' notice of the date time and place of the meeting.
 - b. The Board of Directors shall provide the Fining Committee, at least 3 days in advance of the meeting, with the following:
 - i. A written statement concerning the nature of the deficiency accompanied by any applicable documentation or photographic evidence.
 - ii. A specified fine amount or conditions of suspension and provisions for levying additional fines for each day of a continuing violation if applicable.
5. The Fining Committee shall meet at the appointed time and place to consider the evidence provided by the Board of Directors and any applicable input from the person sought to be fined.
 - a. If the Committee, by majority vote does not approve the proposed fine or suspension, it may not be imposed.
 - b. If the Committee, by majority vote, approves the proposed fine or suspension, the Kelly Pointe Board of Directors shall take the actions necessary to provide written notice of the 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.

6. A fine, once imposed, shall be turned over to BCM Services for billing and collection in accordance with the normal process used for amounts due in connection with the property.

Fining Schedule

1. Violation of requirements which are explicitly stated in the Kelly Pointe Declaration of Covenants and Restrictions (examples: trash cans, recreational vehicles, trailers, boats, temporary structures)
 - a. Identified violation - \$50
 - b. Continuing violation (uncorrected after 1 week following the imposition of the original fine) - \$100/week

*Fines are applied on a per-violation basis. More than one violation may result in more than one fine during the same time period.