

“Unpaid Fines Can Have Consequences,” News-Press

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By: Joseph E. Adams

Q: What happens if I refuse to pay a fine for violating the association’s governing documents? (R.N., via e-mail)

A: A duly levied fine is due after a board appointed fining committee confirms, at a properly noticed fining hearing at which the accused can state his or her case, a fine proposed by the board. Pursuant to amendments to the statute enacted in 2021, the fine is due 5 days after notice is sent to the person who owes the fine.

Assuming the procedures outlined under statute and the association’s governing documents are followed, the association may take action to collect the fine. The condominium and cooperative statutes prohibit unpaid fines from becoming a lien against a unit. The statute for homeowners’ associations, by comparison, provides that no fine of less than \$1,000.00 can be secured by a lien against a parcel, presumably meaning that fines of \$1,000.00 or more may become a lien against parcel, if authorized by the governing documents.

In most cases, a lawsuit in small claims court is the proper venue to collect an unpaid fine. The statute for homeowners’ associations provides that in any legal action to collect a fine, the prevailing party is entitled to recovery of their attorneys’ fees from the non-prevailing party, as determined by the court. While the statutes for condominiums and cooperatives do not contain the same language, it is generally believed that the generic provisions of those statutes allow for the recovery of attorneys’ fees for legal actions brought under the statute.

Fines are “monetary obligations” and, if left unpaid, can also result in the suspension of voting and common area use rights, and disqualification from board service. Unpaid fines can also be disclosed on the “estoppel certificate” that the association provides in connection with the sale of the unit, a process which is primarily aimed at ensuring that assessments and other charges applicable to the unit are properly calculated, accrued, and prorated between a buyer and seller, so that a “clean” and insurable title can be issued.

Q: Can an association charge late fees on past due assessments? (B.K., via e-mail)

A: Yes, if late fees are authorized by the documents governing your community.

The respective laws governing Florida condominium, cooperative, and homeowners' associations allow for an administrative late fee of up to the greater of \$25 or five percent of each late assessment installment, if authorized by the declaration or the bylaws. Assessments and installments on assessments that are not timely paid also bear interest as provided in the declaration or bylaws. If the community documents do not provide an interest rate, interest accrues at the rate of 18 percent per annum.

Payments on delinquent accounts received by the association must first be applied to any interest accrued, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent assessment.

Q: Our homeowners' association board says that we cannot have an ice cream truck in the community because our governing documents prohibit solicitation in the community. Is that true? (K.S., via e-mail)

A: It sounds like your board could use some good humor.

"No solicitation" clauses are generally aimed at prohibiting door-to-door types of activities. The legally correct answer will depend on several factors, including whether your roads are private or public, whether the community is gated, and the easement language in your declaration of covenants.

In the board's defense, there is certainly reasonable cause for concern with children running up to the truck, potential accidents, and the like. If the association owns the roads, it would be a party to get sued in the event of a mishap or tragedy.

Perhaps a reasonable compromise would be to permit the truck to park in a certain common area for a stated period of time, and allow the patrons to come and get their ice cream from the truck only while safely parked and the motor turned off.

Joseph Adams is a Board Certified Specialist in Condominium and Planned Development Law, and an Office Managing Shareholder with Becker & Poliakoff. Please send your community association legal questions to jadams@beckerlawyers.com. Past editions of the Q&A may be viewed at floridacondohoalawblog.com.