

Violations Policy

Biscayne Point Homeowners' Association

9/24/2023

Bylaws and declarations of Biscayne Pointe Homeowners' Association (BPHOA) permit the board of directors to establish policies and procedures to outline daily operation of the HOA and board. This policy letter, approved by the Board of Directors, establishes the policies, timelines, and penalties for violations of the declarations (CCRs).

Policy Intent

The intent of this policy letter is not to become punitive. Rather, it is to ensure the policy, procedures and timeline for violations enforcement is clear to members, Board of Directors, and management. It is to ensure continuity and transparency for future boards and all members. It is to help ensure violations are handled in a fair, consistent and expeditious manner. This policy may be modified by any future board consistent with FL statutes and governing documents.

Controlling FL Statute

F.S. 720.305(2) (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.

Identifying Violations

Violations of CCRs may be identified by any of the following means:

1. Observation by any homeowner/resident, including renters/tenants
2. Observation by any member of the board of directors ("director")
3. Observation by any representative of management company currently contracted by HOA ("management")

Reporting Violations

Any violation directly observed by management or director may be forwarded to management. Any violation observed by other homeowners/residents must be reported to management or a director for verification prior to notification of the offending resident ("violator").

Notification to offending resident

Upon observation/report of a violation, several avenues for notification are available:

1. If the offending residence is a rental, both the resident (tenant) and the owner will be notified of the violation.
2. Ultimate responsibility for resolution rests with the lot owner.
3. When possible and with likelihood of successful resolution, director/management may attempt to make informal contact with the violator to notify and rectify the situation in the most casual manner possible. This step is not mandatory; rather it is available based on judgement of the observer, perhaps in consultation with other directors and/or management.
4. If step 1 above is either not chosen for action or is unsuccessful, management will notify the violator by e-mail and by US Postal Service (no special handling required). This will be considered the initial violation ("first letter"). All subsequent notification, should it be necessary, will use the same means of communication.
5. Notification will detail the observed violation, the date observed, and a citation of the CCRs/Bylaws which are being violated. If a specific remedy is required, that should be specified in this first letter.

Timeline

1. Upon notification of a violation, violator will have 14 days to rectify the situation. Any authorized reporter of violations (director, management) may then observe whether the violation remains uncorrected or is rectified.
2. If violation is uncorrected, violator shall be notified of intent to fine in a "second letter."
3. Violator will have 14 days from the date of the second letter to notify management of their intent to appeal and request a hearing with the Fines/Grievance committee.

Fining

1. Fines will be levied against the owner.
2. Fine amount will be (in accordance with FL statute 720 and CCRs/Bylaws) \$100 per day until the violation is rectified or the statutory maximum of \$1000 is reached.

Fines/grievance committee

1. Fines/Grievance committee should be a standing committee of no less than 3 nor more than 5 willing HOA members in good standing and consistent with restrictions in the Declarations, Article VI, Section 1.B.1.
2. If a violator requests a hearing during the 14-day window, fines will not be levied until the hearing is complete and the committee makes their decision.
3. There is no specific timeline for accomplishing the hearing (it will depend on individuals' availability) but should be expedited since the violation will have existed for an extended period prior to this stage being realized.
4. The committee will hold a hearing with the violator, and any witnesses they choose to contact, to determine:
 - a. If a fine is warranted in the situation
 - b. If the recommended fine (per above) is appropriate
 - c. What fine shall be levied if recommended fine is deemed inappropriate
5. The committee shall notify the violator, BOD, and management of the decision which will then be implemented.
6. Fining, if implemented, will begin immediately and continue until the violation is corrected or statutory limit is reached.

Separate vs continued instances of violations

A repeat violation of a previous violation shall be considered a continuation if the violation is observed/reported again within two months of the previous report/resolution.

Fines accounting

1. Management will track fine amounts which will be added to a homeowner's account. These obligations will be handled in the same manner as special or regular assessments or costs incurred by the HOA then passed to an owner for reimbursement.
2. Fines cannot and will not, on their own, constitute a lien on a property unless litigation is required to recover the fine amount and judgment comes in favor of the HOA with a lien as a legal option for recovery.

This policy letter was approved by the Board of Directors, effective 10/9/2023.



Christopher E. Morton, President

