

Vizcaya's **RULE XII: ENFORCEMENT AND FINES**

Rule XII: Enforcement and Fines

(Ref. *Declaration of Condominium: Article XII: Enforcement; & Bylaws: Section 8: Enforcement Fines*)

A. FINING PROCESS OVERVIEW

1. Right to Fine or Suspend Property Use: Florida Statutes (F.S.) and Vizcaya's Declaration give the Association the right to enforce the Declaration, Articles of Incorporation, ByLaws and Rules ("Documents") by imposing a reasonable fine against the Owner of a Unit (F.S.718.303 (3) or by suspending the right to use the Association's common elements for a reasonable time (except property excluded by F.S. 718.303 (3) (a)) if a Unit Owner or the Unit's occupants, licensees, invitees, tenants, permanent residents or guests fail to comply with the Documents.

2. Right to a Hearing: Fines or suspensions cannot be imposed unless:

- a. The Association provides 14 days certified-mail notice to the Owner and any other alleged violator, in accord with F.S. 718.303 (3) (b) and Vizcaya Bylaw 8, offering them an opportunity for a hearing before a Hearing Committee Panel of three members of the Hearing Committee who are not Association officers, directors or employees or the spouse, parent, child, brother or sister of any of them. The overall number of Hearing Committee members is not limited but all Committee members must be approved by the Board.
- b. The role of the Hearing Committee Panel is to conduct a due process hearing to either confirm or reject the fine and/or suspension proposed by the Board.
- c. The Hearing Committee Panel decision binds the Board. (F.S. 718.303 (b) (3).)

3. Financial Responsibility: Unit Owners are responsible for payment of a fine (ByLaw 8.1) within 5 days after notice by the Board that it is due whether the actual violator is the Owner or an occupant, licensee, invitee, tenant, permanent resident or guest of the Owner. Owners can collect fines from actual violators, but that is a private matter between them. Unit Owners and persons who occupied the Unit and committed the violation are responsible for any attorneys fees and costs incurred by the Association to enforce the Documents if the Association is the prevailing party. (Vizcaya Declaration XII.)

Fines cannot become a lien against a Unit. The Association can collect fines in arbitration or court proceedings. Additionally, under F.S. 718.303 (4) & (5), the Board can authorize suspension of voting rights and common property use if an Owner fails to pay a fine that was confirmed by the Hearing Committee Panel. Such suspensions cannot be imposed unless the confirmed fine remains unpaid for 90 days. The Board can impose these suspensions without affording the violator any other hearing.

4. Informal Resolution Attempts: This Rule provides the sequence of informal and formal resolution steps that foster initial voluntary resolution of these matters before the formal hearing processes are used.

B. INFORMAL RESOLUTION STEPS

1. Step 1: Reporting Violations and Complainant Anonymity: Reports of possible Document violations may be initiated by the Community Association Manager (CAM) or may be

made to the CAM by an owner, tenant, or permanent resident. Complainants need not put the complaint in writing but may do so at their option. The CAM will document any complaints but the Complainant's identity, if other than the CAM, shall be kept confidential at all times throughout the entire voluntary and formal resolution processes.

2. Step 2: CAM's Initial Phone Call/Email Inquiry: Once a complaint has been made, the CAM will promptly call or email the Unit Owner to discuss the alleged violation and encourage voluntary correction/elimination of the violation. If the alleged violation may have been caused by an occupant, licensee, invitee, permanent resident, tenant or guest of the Owner, the CAM will grant the Owner a fixed time period to investigate and report back to the CAM about correction/elimination. If the Owner acknowledges a violation, the CAM will provide a reasonable but limited time to correct/eliminate the violation, will document the call/email, will assure that the violation has been corrected/eliminated within the stated time and will close the file without fines/suspensions. If the violation is not acknowledged and/or not corrected/eliminated, the CAM will document the call/email data for the CAM's file and initiate an investigation under Section C, below.

3. Step 3: Investigation and Creation of An Incident Report:

a. If the owner and any other alleged violator do not resolve the matter within the time required by the CAM, the CAM shall personally investigate the complaint. The investigation may include visiting the site, making personal observations, taking photos, seeking information, and/or by entering a Unit in accord with Vizcaya's Declaration, Section 6.10. A written Association Incident Report shall be promptly completed by the CAM and maintained in the Office files. The Incident Report shall not identify the initiating complainant if other than the CAM. It shall state the Unit involved, the Owner and any other alleged violator, the alleged violation facts, the section of the Documents violated, the date of the informal phone/email contacts and follow ups, and the date of the CAM's investigation with a summary of findings.

b. If the CAM cannot investigate the complaint, the Board President shall do so unless the President has a conflict of interest. The President may also delegate the investigation to the Vice President, Secretary, Treasurer or any other Board Director, in that order, if that investigator has no conflict of interest. The investigator shall promptly complete an Incident Report as stated in Section C. 1, above, and file it with the CAM.

4. Step 4: CAM's Second Informal Resolution Effort: When Incident Reports indicate a violation has occurred, the CAM can phone, email or write a letter, at the CAM's discretion, to the Owner and any other alleged violator, to explain the findings and enforcement procedures, and ask the violator for voluntary compliance with the Documents by correcting/eliminating the violation by a reasonable, fixed Compliance Date determined by the CAM. The CAM will confirm if the violation has or has not been eliminated by the Compliance Date. Contents, dates and results of phone call/emails/letters and follow-up inspections shall be recorded in the CAM's Incident Report.

5. Voluntary Resolution and Avoidance of a Fine: If the Owner and any other alleged violator resolves the alleged violation to the CAM's satisfaction by the stated Compliance Date at Section B 4, above, no fine/suspension shall be imposed. The CAM will document the voluntary resolution in the Incident Report, close the file and maintain the records in the Owner's file.

C. FORMAL FINING PROCEDURES

1. CAM's Report to the Board: If the alleged violation has not been corrected/eliminated within the CAM's stated Compliance Date at Section B 4, above, the Incident Report shall be transmitted to the Board of Directors at their next BOD meeting seeking the Board's proposal of a fine and/or suspension. The Board, by majority vote, shall propose a fine for each violation under ByLaw 8.2 not to exceed One Hundred Dollars (\$100) provided that a fine for a violation that has continued after the Compliance Date at B 4, above, may be up to One Hundred Dollars (\$100) a day up to a maximum of One Thousand Dollars. (\$1000.) The Board may also propose a suspension. Reference to the Incident Report shall appear in the Board's meeting minutes with identification of the Unit associated with the proposed fine and/or suspension but shall exclude names of any alleged violators.

2. Fourteen (14) Day Violation Notice of Hearing on Alleged Violation: Once the Board has proposed a fine and/or suspension, a Violation Notice shall be sent to the Unit Owner and, if applicable, other alleged violator, by certified mail, return receipt requested (and in addition, notice by email shall also be sent to the Unit Owner, if that Unit Owner is overseas) providing at a minimum, fourteen (14) days notice that a hearing will be held before the Hearing Committee including the date, place and time of the hearing at which the owner and any other alleged violator can contest the fine and/or suspension. The Violation Notice, certified mail proof, and any emails, shall be placed in the Incident Report folder. Contents of the folder shall be used by the CAM or other Association representative as evidence at the scheduled hearing.

3. The Formal Violation Notice Shall Include:

a. A short statement of the facts asserted by the Association to support each violation for which a fine and/or suspension has been proposed by the Board and the date of such Board proposal; the date(s) of each violation as can best be reasonably determined; the provisions of the Documents allegedly violated; and the identity and Unit address of the Owner and, if applicable, any other alleged violator.

b. The amount of the Board's proposed fine and/or details of the proposed suspension.

c. The date, time and place for the hearing before the Hearing Committee on the proposed fine and/or suspension; and a statement that if the owner or other alleged violator are not in residence on Vizcaya property, they may email or phone the CAM within the time stated in the Violation Notice and request the hearing be held by ZOOM or phone which shall be arranged. The CAM will alert relevant participants to the arrangements.

d. A statement that the owner and, if applicable, other alleged violator, have a right to attend the hearing, state their case, and challenge evidence against them. If the Unit Owner is not the violator, the Owner must ask the alleged violator, to also attend the hearing.

e. The right to inform the CAM within the time stated in the Violation Notice of the request for a brief postponement of the scheduled hearing for good cause. If a postponement is granted, the CAM will notify the Hearing Committee Panel, the Owner and any other alleged violator of the new hearing date, time and place by letter or email which shall be documented in the Incident Report folder.

f. The right to a request a hearing in the time period stated in the Violation Notice (See ByLaw 8, 3 (c)). Failure to request a hearing or a postponement by the required date shall result in the forfeiture of the right to attend the hearing and contest the fine and/or suspension.

Timely request for a hearing or postponement preserves the right to attend the hearing and contest the fine and/or suspension.

g. Notice that the hearing shall be held to confirm or reject the Board-proposed fine and/or suspension either: (i) with the alleged violator(s) who timely requested a hearing; or (ii) without alleged violator(s) who did not timely request a hearing or postponement. **

***Even though Vizcaya's ByLaw 8.3 (c, e, & f) and 8.4 (b) require the Owner/other alleged violator to "timely request a hearing" in order for a hearing to be held, many prominent attorneys believe hearings must be held even without a request for a hearing so the proposed fine/suspension can be confirmed or rejected. This Rule adopts that view.*

See: Joseph Adams, Fining Procedures Confound Condominium and Cooperative Boards in Becker & Poliakoff, Florida Condo and HOA Law Blog <https://www.floridacondoalawblog.com>.

Dana Fernandez, Fining Procedures: Most Commonly Asked Questions (2018) in <https://www.fcagroup.com>

Michael Cochran, Statutory Fining Procedures for your Association. Law Offices of Wells, Olah, Cochran P.A. at sarasotacondolaw.com

Mary Hawk, Esq. of Porges, Hamlin, Knowles & Hawk. Enforcement and Compliance: How to Enforce Community Association Covenants. Seminar Presentation Power Points (2021).

4. The Formal Hearing:

a. **Payment of Fine and/or Agreement to Suspension Pre-Hearing:** If the Owner pays the Board-proposed fine and/or agrees in writing to the Board-proposed suspension, at any time before the scheduled hearing date, no hearing will be held. The CAM will alert the Hearing Committee, participants, and the Board and the matter will be closed and shall be retained in the Owner's file.

b. **Required Posting of Hearing when Decisions Bind the Board:** The Chair of the Hearing Committee shall duly post the scheduled hearing date, time, place and Unit number involved and allow community members to attend but they cannot participate except for witnesses identified by the parties at the start of the hearing.

c. **The Hearing:** Hearing Committee members shall select a three (3) member Hearing Committee Panel from among their members with no conflict of interest with the alleged violator(s). The role of the Hearing Committee Panel is not to investigate the matter prior to the hearing, but to conduct an impartial due process hearing by listening to each side's evidence, questioning the parties regarding their evidence, if needed, and allowing each party to respond to the other side's evidence. At the scheduled hearing, the Hearing Committee Panel shall hear the evidence from the CAM or other Association representative regarding the alleged violation, informal steps to resolve the matter, the contents of the Incident Report, the critical appropriate notice procedures and appropriate mailing addresses used, and relevant Office emails, letters and calls. If the Owner and any other alleged violator attend the hearing pursuant to their timely request for a hearing or postponement, the Hearing Committee Panel shall allow them to state their case, present oral and written evidence, and challenge any evidence against them. Either side can request witnesses to attend the hearing to present evidence but the hearing shall be held even if the witnesses fail to attend. The Hearing Committee Panel members are free to pose questions throughout the hearing to either party. The anonymity of the original complainant, if other than the CAM, shall remain confidential at all times.

d. **The Hearing Decision:**

(i) The Hearing Committee Panel shall issue a majority decision which shall be limited to confirming or rejecting the Board-proposed fine and/or suspension and shall promptly send written hearing minutes and the written decision to the CAM for transmission to the Board. This decision may be made at the hearing before all parties are dismissed or after all the parties are dismissed but the decision must be stated in the written minutes of the hearing. The Hearing Committee Panel's decision is binding on the Board. If the Panel rejects the fine, it may not be imposed by the Board. If the Panel confirms the fine, it shall be imposed by the Board.

(ii) After receiving the Hearing Committee Panel decision, confirming or rejecting the Board-proposed fine and/or suspension, the Board at a regularly-scheduled Board meeting shall: (a) impose the fine confirmed by the Panel; (b) impose any suspension confirmed by the Panel; or (c) dismiss the fine and/or suspension that was rejected by the Panel. Notice of the Board's action shall be sent to the Owner. Board-imposed fines shall be due within 5 days after receipt of the Board notice. All Panel decisions and subsequent Board action shall be maintained in the Owner's files that are kept by the Office.

D. The Enforcement Process With Potential Threat or Danger:

1. In the event that a violation of the rules by any Unit Owner, occupant, guest or invitee present a potential threat of danger or violence, the following procedure will be followed:
 - a. The reporting Unit Owner or occupant should call the Sheriff's Department immediately. The Unit Owner or occupant should never place himself/herself in danger by confronting the situation personally.
 - b. The Unit Owner or occupant can contact the Manager if the event occurs during normal business hours **or after hours, contact Castle Group Emergency Service at (800) 337- 5850.**
2. The reporting Unit Owner should report the violation to the Manager as soon thereafter as possible.
3. In the event of repeated violations by a Unit Owner which include police involvement, the Board of Directors may elect to institute the procedures in paragraph A, above.

(BOD Approval: October 4, 2022)