

WINGFIELD NORTH HOA FINE POLICY & PROCEDURE

Fines for violations of the Wingfield North Declaration of Covenants and Restrictions may only be imposed by a Committee of 3 members, after being requested to do so by the Board of Directors of the Association and holding a Committee hearing in accordance with the terms of this Policy & Procedure.

The Committee shall be composed of Owners, appointed by the Board of Directors, who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. No Owner may serve on the Committee while he or she is delinquent in the payment of assessments, or while there exist any other uncured violations of the Declaration by such Owner or their property with respect to which the Owner has received written notice from the Association.

The Board shall be entitled, in its discretion, to appoint more than 3 members to the Committee, to appoint a chairperson of the Committee, and to replace, add and remove members from time to time. Any hearing of the Committee may be conducted by any 3 members, chosen by the Board or the chairperson of the Committee, depending on the Committee's hearing dates, its members' schedules and their willingness and availability to serve, among other considerations. A hearing of the Committee shall not require the participation of all members of the Committee in order to be effective.

The Board of Directors of the Association may, by majority vote, request the Committee to impose a fine if the Board determines, in its discretion, that any of the following has occurred:

1. An Owner has violated the terms of the Declaration in any respect, has been notified in writing of and has been requested by the Association to cure that violation at least three (3) times, has had a reasonable time to cure the violation, and has failed or refused to do so;
2. An Owner has committed the same or a substantially similar violation of the Declaration on three (3) separate occasions, the violation concerns conduct of the Owner or his or her tenant, licensee or invitee that does not relate to the physical condition of the Owner's home or property, and the Owner was previously notified in writing by the Association at least three (3) times to cease and desist from any recurrences of such a violation;
3. An Owner has willfully and materially violated the terms of any approval given by the ARB or the Association, or taken with any action which was previously disapproved by the ARB or the Association;
4. An Owner has committed a violation of the Declaration which is impossible to cure, such as (but not limited to) cutting down one or more live trees (without prior ARB or Association approval) that are of a size which is impossible to replace with like sized trees;
5. An Owner has committed a violation of the Declaration which is so egregious, inappropriate and/or unreasonable as to constitute willful misconduct, recklessness or unlawful conduct, under circumstances where the Owner clearly knew or should have known that their actions were wrongful; and/or
6. An Owner has committed such other violation(s) of the Declaration as the Board reasonably believes should be the basis for imposition of a fine.

Once the Board of Directors has requested the Committee to impose a fine, the following procedure (paraphrased from the Declaration and modified as needed to comply with Florida Statutes) shall be followed before a fine (if any) can be imposed:

"A fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants or employees, to comply with any covenant, restriction, rule or regulation of the Association, provided the following procedures are adhered to:

(a) Notice of Hearing: The Board shall notify the Owner of the alleged violation(s) for which it seeks to have a fine imposed. Included in the notice shall be the date and time of a meeting of the Fine Committee at which the Owner shall present reasons why a fine should not be imposed. At least fourteen (14) days' notice of such meeting shall be given.

(b) Hearing: The alleged violation(s) shall be presented to the Fine Committee, after which the Committee shall hear reasons why a fine should not be imposed. The Owner shall have a right to be represented by counsel and to cross-examine witnesses at the hearing. If the impartiality of any Committee-member at the hearing is reasonable called into question, the Board shall appoint a replacement member who is impartial, for which purpose the hearing may be rescheduled if needed.

(c) Fines: The Committee (if its findings are made against the Owner) may impose a fine against the Owner for a one time violation, or multiple fines for violations which are of a continuing nature, in an amount not in excess of Two Thousand Five Hundred Dollars (\$2,500.00). Fines may be imposed as "one time" fines or may be imposed using a "daily amount."

(e) Notice of Fines: The Committee's written decision shall be delivered by the Committee to the Board, and by the Board to the Owner, not later than 21 days after the hearing. If the Committee imposes a fine, the Board must provide written notice of such fine by mail or hand delivery to the Owner and, if applicable, to any tenant, licensee, or invitee of the Owner.

Before any hearing is conducted, any Board member or Committee member may personally inspect the condition of any property with respect to which a violation is alleged to exist. If the condition cannot be seen from the street, the Board member or Committee member may request the Owner to allow them to enter onto the Owner's property for such purpose, or may request a neighbor to allow them to enter onto the neighbor's property to view the affected Owner's property. However, the consent of the Owner is not required as a condition to the entry onto the Owner's property to view its condition if such entry is made in connection with the performance of the Board or Committee member's official duties.

If the Committee finds that (i) a violation of the Declaration exists, and (ii) the circumstances justify the imposition of a fine, but (iii) there exist extenuating circumstances which justify a delay in the imposition of a fine in order to give the offending Owner one final opportunity to cure the violation before a fine is imposed, the Committee may impose a fine subject to the condition that it shall be deemed waived if the violation is cured to the satisfaction of the Board of Directors of the Association within 30 days after the Owner receives written notice of the Committee's decision. In such event, the Board shall determine, at its next regular meeting following the expiration of the 30 day period, whether or not the violation has been cured to its satisfaction. If so, the fine shall be waived. If not, the fine shall remain in full force and effect. It shall not be necessary to resubmit the matter to the Committee for any further consideration; rather, the Board's determination shall be final.

All Board and Committee members are required by law to act (i) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner he or she reasonably believes to be in the best interests of the Association. Under Florida Statutes, a Board or Committee member is not liable for any action taken, or any failure to take any action, if he or she performed the duties of his or her office in compliance with these requirements.

Pursuant to the Declaration, the Committee's imposition of a fine shall not be an exclusive remedy (i.e., not the sole remedy for a violation), but shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fine paid by an offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.