

Chapter 12 - Section 12.04

COMPLIANCE COMMITTEE

POLICY

The Rotonda West Association, Inc. is authorized by Chapters 617 and 720, Florida Statutes to organize according to the needs of the Association. The RWA By-Laws, in Article II, Section 10 requires the Board of Directors to establish certain committees mandated by Florida Statutes to facilitate the overall operation of the Association.

The Compliance Committee (the "Committee") is a Required Standing Operating Committee mandated by Section 720.305, Florida Statutes to carry out the purposes stated in the Charter below. The Committee is also authorized to make recommendations to the Board of Directors as may reasonably be necessary to advance the interests of the RWA. The Board has the option of modifying the Charter at any time, consistent with Section 720.305, Florida Statutes as it may be amended from time to time.

Charter: The Compliance Committee is created to serve as the committee contemplated by Section 720.305(2)(b), Florida Statutes.

PROCEDURE

- 12.04.01 Roles and Responsibilities
- 12.04.02 Committee Member Qualifications
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12.04.01 ROLES AND RESPONSIBILITIES

A. Board of Directors

The Board of Directors shall appoint the Committee Chairman who shall then form the Committee subject to the approval of the Board of Directors.

B. Committee Chairman

The Committee Chairman shall select candidates for membership on the Committee and thereafter submit the names of the candidates to the Board of Directors for approval.

C. Board Approval of Committee

No candidate selected by the Committee Chairman may serve on the Committee until approved by the Board. The Committee members shall serve at the pleasure of the Board. The Board shall have the power to, at any time, remove any Committee member with or without cause and fill vacancies in the Committee. The Board shall also have the power to dissolve such Committee.

12.04.02 COMMITTEE MEMBER QUALIFICATIONS

A. Make Up of the Committee

The Committee shall be comprised of not more than fourteen (14) residents and/or property owners. These residents may not be officers, directors or employees of the Rotonda West Association (RWA) or a spouse, parent, child, brother or sister of an officer, director or employee.

Each subdivision may have no less than two (2) representatives on the Committee. Five residents will generally sit on the Committee at any given hearing. However, three (3) members will constitute a quorum.

B. Disqualification of a Member

Any Committee member who is related to, or resides in the subdivision of, any resident and/or property owner appearing before the Committee may not sit on the Committee or participate in any manner in the hearing on that particular matter.

12.04.03 ORGANIZATION OF THE COMMITTEE

At the first meeting following appointment by the Board of Directors, the Committee shall approve the Chairman appointed by the Board of Directors and shall elect a Vice-Chairman, who will conduct the hearing in the absence of the Chairman, and a Recording Secretary, who will call the role at the start of all meetings/hearings, call the role of the votes if the vote of the Committee is not unanimous, and publish the minutes of the hearing, including any votes with regard to fining or other sanctions.

12.04.04 FINING PROCEDURE

RWA may, but shall not be obligated to, use the procedure set forth herein for purposes of enforcing the terms the Restrictions, the Articles of Incorporation, the Bylaws, the Rules and Regulations, all policies, resolutions and lawful orders of the Board, and applicable provisions of law (collectively referred to hereinafter as the "Governing Documents"). This procedure shall serve as an independent method of enforcing the Governing Documents. RWA shall not be required to exhaust the remedies provided herein prior to initiating legal proceedings or pursuing other remedies to enforce the Governing Documents. Furthermore, should it choose to do so, RWA may follow the procedure to impose a fine and exercise other available remedies simultaneously where appropriate.

General compliance with this procedure shall be sufficient, it being intended to be used as a guideline to ensure fairness in the fining process. It is the intention of this procedure and the referenced exhibits that persons sought to be fined are given a reasonable notice to be heard before the imposition of a fine. The Manager, in consultation with the President where appropriate, shall have the authority to disregard the provisions of this procedure in circumstances where the alleged behavior of a person constitutes a violation of criminal law, or poses a threat to the health, peace, safety, or welfare of the residents of Rotonda West, or in other circumstances where RWA believes such disregard is justified.

1. The Manager may confer with the President and/or legal counsel, but shall be delegated the general authority (subject always to contrary direction by the President or the Board) to determine which alleged violations of the Governing Documents shall first be addressed by a warning letter and which alleged violations are of such a nature that they are to be sent directly to the Board for consideration of the levy of a fine. It shall generally be the policy of RWA to issue a prior warning/opportunity to cure to first time offenders for minor violations. Furthermore, it shall generally be the policy of RWA that where the alleged violation is a repeat violation, or where the alleged violation is sufficiently serious, as determined by the Manager or the President, the procedure may be initiated without a prior warning/opportunity to cure.

2. When it is determined that the alleged violation is of the nature where a prior warning/opportunity to cure is warranted, the "Notice of Violation," attached hereto as Exhibit "A," or a similar form promulgated by the Board (collectively referred to hereinafter as the "Notice of Violation") can be used to provide such notice.

3. If the alleged violation is not abated to the satisfaction of the Manager or President within the timeframe provided in the Notice of Violation, or in cases where it is determined that no Notice of Violation will be issued, the Manager, on behalf of the Board, shall be empowered with the authority to initiate the fining process. The fining process shall be initiated by including consideration of the levy of a fine relative to the alleged violation on the agenda of a regular or special meeting of the Board. Notice of the meeting is to be provided as required by the Governing Documents. Unless required by the Governing Documents, no personal notice need be provided to the Owner or the party(ies) to be fined.

4. If, at the noticed meeting, a quorum is present, but less than a majority of the Directors present approve the levy, no fine may be imposed, and no further action is required. Alternatively, if at least a majority of the Directors present approve the levy of a fine, the Manager shall be authorized to send the party(ies) against whom a fine was levied written notice of a hearing before the Committee. The "Notice of Hearing," attached hereto as Exhibit "B," or a similar form promulgated by the Board (collectively referred to hereinafter as the "Notice of Hearing") can be used to provide such notice.

5. The Committee shall be empowered with the authority to conduct fining hearings. With respect to decision making authority, the role of the Committee is limited to determining whether to confirm or reject the fine levied by the Board. Actions of the Committee shall be by vote of a majority of the Committee members present at a meeting at which a quorum is present.

6. The hearing will be conducted by the Chairman of the Committee or the Vice-Chairman, in the absence of the Chairman. An appropriate representative of RWA shall present evidence of the alleged violation for consideration by the Committee regardless of whether the Owner and/or the party(ies) to be fined are present. If present, the Owner and/or the party(ies) to be fined, or his/her/their legal counsel, shall then have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by RWA. Following presentation by RWA and by or on behalf of the Owner and/or the party(ies)

to be fined, the Committee will make a determination. If the Committee does not agree with the Board's decision to levy a fine, no fine may be imposed, and no further action is required.

7. If the Committee confirms the fine, the fine may be imposed by the Board of Directors. The Board of Directors may hold a meeting of the Board following the Committee hearing to impose the fine. Alternatively, a fine may be deemed automatically imposed upon the Committee's confirmation of the fine without further action of the Board of Directors unless a contrary intention is reflected in the minutes of the Board meeting where the fine is levied.

8. If the Board intends to hold another meeting to impose the fine, the Committee shall summarize its decision in a report. The report will be presented by a Committee member or the Manager to the Board at its meeting where the fine is to be imposed. Alternatively, where the fine is automatically imposed, the report shall be kept with RWA's official records. The "Report of Compliance Committee," attached hereto as Exhibit "C," or a similar form promulgated by the Board (collectively referred to hereinafter as the "Report of Compliance Committee") can be used for this purpose.

9. Once the fine is imposed, notice of the imposition must be provided to the Owner and, if applicable, the party(ies) against whom the fine is sought to be imposed (if different from the Owner). The "Notice of Imposition of Fine," attached hereto as Exhibit "D", or a similar form promulgated by the Board (collectively referred to hereinafter as the "Notice of Imposition of Fine") can be used to provide such notice.

12.04.05 DELEGATION OF ADDITIONAL POWERS AND DUTIES

The Board may delegate such other powers and duties to the Manager or to such other person as may be necessary or appropriate under the circumstances. The Board may adopt additional policies and procedures for the Manager or such other persons to follow, or to be utilized in connection with the fining process, as amended from time to time.

12.04.06 NOTICES

All notices set forth herein shall be sent by U.S. Mail or hand-delivered, with receipt of such delivery. Though not required, it is recommended that notices sent via U.S. Mail be sent by certified mail, return receipt requested. If the notice is sent by certified mail, it is recommended that a copy be sent via First Class Mail as well. Copies may also be sent by electronic mail, but such delivery is not required. Failure to use certified mail or obtain any type or receipt shall not invalidate the notice given provided that it is sent as required by the Governing Documents.

EDIT/INSERT INFORMATION IN *ITALICS* BEFORE LETTER IS SENT

NOTICE OF VIOLATION

_____ [Date Sent]

_____ [Method of Delivery; if Certified include Tracking Number]

*If Owner Occupied Lot/Tract:
All Record Owners per Deed
Notice Address of Record*

Dear Owner:

OR

*If Non-Owner Occupied Lot/Tract:
Tenant/Non-Owner Occupant
Lot/Tract Address*

Dear Tenant/Non-Owner Occupant:

The following violations of the Governing Documents have been noted with regard to the Lot/Tract you own and/or are occupying in Rotonda West:

[Insert violation(s) here including citation to Governing Documents and as much detail as possible as to date(s), time(s) and place(s) of alleged violation(s).]

Please be advised that if *this violation is OR these violations are* not corrected by *[date*]*, or if further violations occur, the Association reserves the right to take further action against you to enforce the Governing Documents. You are required to *[fill in demanded relief here]*.

If you fail to comply, further legal action may ensue without further notice or demand. Such legal action may include (but is not limited to): the imposition of a fine following a proper notice and opportunity for hearing as required by law; and/or the filing of a lawsuit for damages in the court of appropriate jurisdiction; and/or the filing of a lawsuit for an injunction in the court with appropriate jurisdiction; and/or the service of a demand for mediation pursuant to Section 720.311, Florida Statutes. In the event the Association takes any of the foregoing legal actions, the Association will seek to recover its attorneys' fees and costs as permitted by the Governing Documents and Chapter 720 of the Florida Statutes.

** In general, 10 days' notice will be given for correction of most violations. Other violations may result in the initiation of a proposed fine without a prior warning, and this letter would not be used. The Manager shall have the authority to require timelier, including immediate, compliance in appropriate circumstances, as well as more liberal compliance deadlines, as determined in the discretion of the Manager in consultation with the President.*

**EXHIBIT A
NOTICE OF VIOLATION**

[Include this paragraph only if Lot/Tract is Non-Owner Occupied] This Notice is also being provided to the record Owner(s) of the Lot/Tract. Pursuant to Florida law and the Governing Documents, the Owner is jointly and severally liable for the conduct of his or her tenants, and the occupants of the Lot/Tract, as well as their guests, licensees, or invitees. Accordingly, if the violation is not corrected, this letter serves as notice that the Association may also take the above-referenced actions against the Owner(s), either directly, or jointly and severally.

Very truly yours,

Association Manager Name, Association Manager
On behalf of the Board of Directors

cc: If Owner Occupied, Owner by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)
If Non-Owner Occupied, Tenant/Non-Owner Occupant by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)
If Non-Owner Occupied, Owner Address of Record by regular mail and e-mail (if Association has e-mail address, but e-mail optional)
Board of Directors

EXHIBIT A
NOTICE OF VIOLATION

EDIT/INSERT INFORMATION IN *ITALICS* BEFORE LETTER IS SENT

NOTICE OF HEARING

_____ [Date Sent[†]]

_____ [Method of Delivery; if Certified include Tracking Number]

*If Owner Occupied Lot/Tract:
All Record Owners per Deed
Notice Address of Record*

Dear Owner:

OR

*If Non-Owner Occupied Lot/Tract:
Tenant/Non-Owner Occupant
Lot/Tract Address*

Dear Tenant/Non-Owner Occupant:

Section 720.305(2), Florida Statutes and the Association's Board Resolution Creating Fining Procedures and Establishing a Compliance Committee (the "Resolution") provides that the Rotonda West Association, Inc. ("the Association") may levy reasonable fines against any Member or any Member's tenant, guest, or invitee for the failure of the Owner of the Lot/Tract or its occupant, licensee or invitee to comply with any provision of the Restrictions, the Association Bylaws, or reasonable rules of the Association; and

[If Notice of Violation was given in advance, use the following] The violation described in the Association's Notice of Violation dated _____, 20__, has not been corrected and/or has resumed. Accordingly, the Association's Board of Directors has levied a fine against you in the amount of \$ _____ per day/\$ _____ in the aggregate for a continuing violation. **ENCLOSE COPY OF NOTICE OF VIOLATION WITH NOTICE OF HEARING**

[If NO Notice of Violation was given in advance, use the following instead of previous paragraph] The following violations of the Governing Documents have been noted with regard to the Lot/Tract you own and/or are occupying in Rotonda West:

[Insert violation(s) here including citation to Governing Documents and as much detail as possible as to date(s), time(s) and place(s) of alleged violation(s).]

The Association's Board of Directors has levied a fine against you in the amount of \$ _____ per day/\$ _____ in the aggregate for a continuing violation.

[†] This Notice should be sent *at least* twenty (20) days before the hearing so that the recipient is in receipt of the letter *at least* fourteen (14) days before the hearing.

Pursuant Section 720.305(2)(b), Florida Statutes, you are entitled to a hearing before a compliance committee of at least three (3) 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 (the "Committee"). This hearing will be held on the *[day] day of [month] 20[year], at [time] at [place, include address]* to determine whether to confirm or reject the fine levied by the Board of Directors.

You have a right to attend the hearing to respond, to present evidence, and to provide written or oral argument. You will be provided with an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. You also have a right to be represented by counsel at the hearing. If you intend to appear with counsel, please notify the Association, in writing, no later than seven (7) days prior to the hearing so that the Association has sufficient time to arrange for its counsel to be present should it choose to do so. If you fail to appear at the hearing, the fine, if confirmed by the Committee, will be imposed after the hearing has been conducted in your absence.

If you have any questions about scheduling, please contact *[Association Manager]* at *[phone number]* or *[e-mail address]*.

In the event that the Committee confirms the fine levied by the Board of Directors, the fine will be imposed. If the Committee rejects the fine, it will not be imposed. You will receive written notice of any fine imposed.

[Include this paragraph only if Lot/Tract is Non-Owner Occupied] This Notice is also being provided to the record Owner(s) of the Lot/Tract. Pursuant to Florida law and the Governing Documents, the Owner is jointly and severally liable for the conduct of his or her tenants, and the occupants of the Lot/Tract, as well as their guests, licensees, or invitees. Accordingly, the fine may also be imposed against the Owner(s), either directly, or jointly and severally. In cases where only a non-Owner (e.g., tenant, occupant or invitee) is fined, the Owner shall be jointly and severally liable for payment of the fine.

Very truly yours,

Association Manager Name, Association Manager
On behalf of the Board of Directors

cc: *If Owner Occupied, Owner by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)*
If Non-Owner Occupied, Tenant/Non-Owner Occupant by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)
If Non-Owner Occupied, Owner Address of Record by regular mail and e-mail (if Association has e-mail address, but e-mail optional)
Board of Directors

EXHIBIT B
NOTICE OF HEARING

REPORT OF COMPLIANCE COMMITTEE

TO: Board of Directors, Rotonda West Association, Inc.

1. Name(s) of Owner(s) and, if applicable, the party(ies) against whom the fine is sought to be imposed (including relation to Owner): _____

2. Property Address: _____
3. Type of Alleged Violation (describe basic violation and applicable provision of Governing Documents): _____

4. Notice of Violation sent: Yes No
If yes, date Notice of Violation sent: _____, 20 _____
5. Date Notice of Hearing sent: _____, 20 _____
6. Date of Hearing: _____, 20 _____
7. Proper notice of hearing verified with Manager: Yes No
8. Names of those who appeared at hearing on behalf of Lot/Tract: _____

9. Names of those who presented evidence at the hearing on behalf of Association: _____

10. Fine levied by Board (if any) : \$ _____ per day/\$ _____ aggregate
 Confirmed Rejected (attach list of votes by member if not unanimous)

Signed: _____
Chair or Vice-Chair of Committee

Print Name: _____

Date: _____

EDIT/INSERT INFORMATION IN *ITALICS* BEFORE LETTER IS SENT

NOTICE OF IMPOSITION OF FINE

_____ *[Date Sent]*

_____ *[Method of Delivery; if Certified include Tracking Number]*

*If Owner Occupied Lot/Tract:
All Record Owners per Deed
Notice Address of Record*

Re: Notice of Violation Dated _____, 20__ *[If Notice of Violation was given in advance]*; Notice of Hearing Dated _____, 20__; Hearing Held _____, 20__

Dear Owner:

OR

*If Non-Owner Occupied Lot/Tract:
Tenant/Non-Owner Occupant
Lot/Tract Address*

Dear Tenant/Non-Owner Occupant:

Re: Notice of Violation Dated _____, 20__ *[If Notice of Violation was given in advance]*; Notice of Hearing Dated _____, 20__; Hearing Held _____, 20__

The Compliance Committee (the "Committee") confirmed the fine levied by the Board of Directors in the amount of \$ _____ per day/\$ _____ in the aggregate, as authorized by law. As such, the Board of Directors has imposed a fine in the total amount of \$ _____. **Payment of the fine is due (must be received by the Association) no later than thirty (30) days from the date of this letter.**

You may remit payment of the fine to the Association at *[mailing address]*. Checks should be made payable to **Rotonda West Association, Inc.** If you fail to pay the fine, the Association reserves all rights available under law to collect the fine. These include (but are not limited to) additional fines as may be permitted by law and filing an action in a court of competent jurisdiction to recover the fine. Pursuant to Florida law, the prevailing party in such proceedings is entitled to recover reasonable attorneys' fees and costs.

[Include this paragraph only if Lot/Tract is Non-Owner Occupied] This Notice is also being provided to the record Owner(s) of the Lot/Tract. Pursuant to Florida law and the Governing Documents, the Owner is jointly and severally liable for the conduct of his or her tenants *and the occupants of the Lot/Tract, as well as their guests, licensees, or invitees.* Accordingly, *this Notice shall serve as notice to the Owner that he or she is jointly and severally liable for*

payment of the fine.

Thank you for your prompt attention to this matter.

Very truly yours,

Association Manager Name, Association Manager
On behalf of the Board of Directors

cc: If Owner Occupied, Owner by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)
If Non-Owner Occupied, Tenant/Non-Owner Occupant by regular mail (if letter also sent by certified mail) and e-mail (if Association has e-mail address, but e-mail optional)
If Non-Owner Occupied, Owner Address of Record by regular mail and e-mail (if Association has e-mail address, but e-mail optional)
Board of Directors

FINING PROCEDURE FLOWCHART
(tied to Resolution Establishing Fining Procedures)

