

## Town Shores of Gulfport, #200, Inc

### Fining Policy 001

March 01, 2023

**I. Purpose:** The Fining Policy describes the procedures for the imposition of fines the Board of Directors (BOD) may impose as one mechanism to enforce the rules and regulations of Town Shores of Gulfport #200 (also known as, and referred to here as “Avalon” or “the Association”). The policy is governed by and written in conformity with Florida Law and is undertaken to discourage violation of Association rules.

**II. Policy Authority:** In Florida, Condominium Associations have the ability to access fines and issue suspensions upon unit owners pursuant to Florida Statutes, 718.303. It is important for board members, property managers, and unit owners to be familiar with this statute when it comes to imposing fines and suspensions on unit owners.

### III. Cognizant Office:

The contact information for the Avalon building, Town Shores #200, Inc Board of Directors and the Fining Review Committee Chair can be found on the Avalon Building link of the Town Shores Community website. <https://www.townshorescommunity.com/building-association-pages>

### IV. Overview of Violation Fining Process by BOD:

A. The BOD identifies the violation and engages the condo owner of such by verbal, email or written note to bring the issue into compliance. This step is considered the “initial violation” notice. The BOD member who performs this notice must inform at least two other board members. The BOD will start a fining case file for this unit owner to hold all relevant documentation.

Examples below are of some common violations but are not limited to this list:

1. Improper storage of personal property
2. Pets not being controlled properly
3. Violation or not adhering to non-smoking rules including backyard patios
4. Painting your front door a non-compliant color
5. Non-adherence to construction or architectural guidelines
6. Any other violations of the currently approved rules & regulations.

Note: Depending on the type of violation the BOD has the right to assign a timeframe as to when the violation must be corrected.

B. A “2<sup>nd</sup> violation” notice will be issued for a repeated violation if the 2<sup>nd</sup> violation occurs within a 12- month timeframe. This “2<sup>nd</sup> violation” notice will be signed by at least three (3) BOD members providing majority consent.

C. If the owner has not remedied or corrected the violation, within thirty (30) days of the “initial violation” notice or within the timeframe assigned by the BOD, the BOD may issue in writing to the owner an “intent to fine” notice and an opportunity for a hearing before a committee. The “intent to fine” notice, along with all case documentation, will be forwarded to the FRC.

Note: The fine cannot exceed \$100 per day, per violation, or \$1,000 in the aggregate per separate violation.

D. Written notices must contain the following:

1. Description of the violation,
2. Picture if applicable and possible,
3. Required timeframe to correct the violation,

4. Amount of the fine or consequences of the non-compliance, and
5. Additionally, in the disclosure of the "Intent to Fine" notice, it will be stated all case documentation will be forwarded to the FRC and the owner will have the right to be heard before the FRC.

**E. Imposition of Fine by the BOD:**

1. Within 30 days after the FRC rules the fine is applicable, the BOD shall, at a duly called meeting, impose the fine but may not adjust the fine or receive additional statements or arguments with regard thereto.
2. The BOD shall notify the owner, by mail or hand delivery, of the amount of the fine and date due.
3. Any fines levied by the BOD will be due and payable immediately. Failure to pay will be treated in accordance with the governing documents.
4. The BOD will include any fine amount in the account ledger.

**F. Non-payment of Fine:**

1. The BOD sends a non-payment of fine collection notice to owner.
2. The BOD coordinates with a collection agency or attorney.
3. For non-payment beyond 30 days, a legal letter of non-payment is sent followed by small claims lawsuit. Prevailing party is awarded attorney's fees.
4. If fine is 90 days past due, the BOD has the ability to suspend the owner's voting rights and use of common areas.
5. All suspensions must be approved at a properly noticed board meeting.
6. Notice of suspension must be sent to owner and tenant, if applicable.

**V. Procedures of Violation Fining Process by the FRC:**

**A. Step 1: Identify the Violation:**

1. The BOD issues the violation notice to the owner and informs the FRC.
2. Should a violation be remedied when notice is issued it will be considered satisfied unless it recurs again within 12 months. Each like-kind recurrence will be treated as a continuation of the first violation within a twelve-month period and notification steps will advance accordingly. An example would be if a BOD member requests compliance with not smoking on the premises from a visitor, occupant or owner of a unit and it was immediately satisfied but occurs again by anyone from that same unit within 12 months the notification process will continue to second and subsequent notices. If correction is made each occasion but that same kind of violation repeats within 12 months, sequential notices will be given incurring fines for repeat offenses.
3. The FRC is an impartial committee who assesses whether the fine imposed by the BOD is valid. As such no members of the FRC shall take part in identifying violations or issuing violation notices.

**B. Step 2: Send a 14-Day Notice of the hearing:**

1. The alleged violating owner and, if applicable, tenant must be given a 14-day written notice and an opportunity for a hearing in front of the FRC before the BOD may impose a fine.
2. The Notice must describe the violation, and provide the owner with a minimum of 14 days notice of the hearing before the FRC where they have an opportunity to defend themselves.

**C. Step 3: Coordination Steps for Establishing Hearing Date and Time with the Owner:**

1. An owner (or resident, by written consent of owner) shall have the right to appeal any notice of violation and/or fine by appearing for the hearing, at which time the owner may present evidence or explanation why the property owner has not violated the governing documents or why special circumstances exist.
2. An appeal/hearing request must be submitted in writing to the FRC within 10 business days from the date of the notice of violation letter.
3. If a hearing is requested within the 10 days no further action or additional notices for the same violation, or fine shall be assessed until the hearing process is complete.

4. Document any attempts made to coordinate the hearing.
5. Include who made the call, what time, whom spoken to, notes of call, etc.
6. The Fining Review Committee will notify the owner of the date, time and location of the hearing.

**D. Step 4: At the Hearing:**

1. The owner will have the opportunity to present their facts and may provide evidence of compliance or defending information and documentation to the FRC.
2. No member of the BOD will be at the hearing. The owner and, if applicable, the tenant will be presenting to only FRC members.
3. The FRC's decision to "Confirm" or "Reject" the BOD's recommended fine will not be rendered at the hearing but only after review of all the facts.
4. The fine cannot exceed \$100 per day, per violation, or \$1,000 in the aggregate per separate violation.

**E. Step 5: Fining Review Committee Reports to the BOD— "Confirm" or "Reject" Fine:**

1. Whether the property owners fail to appear, appear, or appeal by writing, the FRC will rule to confirm or reject the fine based on the facts gathered regarding the validity of the alleged violation.
2. The FRC will complete the recording of the hearing by noting any submission or absence of defense evidence by the owner. Additional notes, pictures or evidence may be attached.
3. The FRC shall notify both the BOD and the unit owner of its hearing decision regarding the fine.
4. The BOD will impose the fine if confirmed valid by the FRC.
5. The BOD will retain all records in a secured filing system on location.

**H. Step 9: Meeting Policy and Procedures:**

1. All meeting minutes should be completed within 15 days of the meeting held and will follow the latest version of Roberts Rules of Order.
2. The meeting agenda is retained minimally for one year. The member sign-in sheets, important business or legal correspondences will be retained for four years. The FRC's minutes, notes and legal settlement agreements should be retained permanently.

## **VI. Attorney Usage and Client Privilege**

- A. The Condo Association will require owners to reimburse for collection costs, reasonable attorney fees and any other costs incurred by its attempts to collect sums owed to the Condo Association, enforcement of governing documents and Rules and Regulations for the Condo Association. In the event the unit owners prevail, the Condo Association shall not charge any of the above costs to the owner.
- B. Once the BOD has resolved any matter for which they sought legal advice or that concerned litigation, including collection of past due assessments, the BOD at its discretion may disclose such communication or opinion and disclose at an open meeting and make the opinion an open document to the Condo Association membership, or the BOD, at its discretion, may preserve the attorney client privilege on the issue. The BOD shall discuss in executive session prior to relinquishing the attorney client privilege.
- C. Non-compliance of Violation:
1. Bring an Action for Damages or injunctive relief, or both.
  2. Further, nothing herein shall be construed as a prohibition or limitation of the right of the BOD to pursue other means to enforce the provisions of the various Condo Association governing documents, including but not limited to mediation, arbitration, or legal action for damages and or injunctive relief.
  3. Consultation by the BOD with appropriate association attorney may be sought.

## VII. Code of Conduct for Fining Review Committee

The FRC serves for the benefit of the entire community, and shall, at all times, strive to do what is best for the Condo Association as a whole.

## VIII. Definitions

**Board of Directors – (BOD):** an elected group of people who manage or direct the actions within The Avalon Building condominiums at Town Shores of Gulfport No. 200. The responsibilities include: Enforce the documents. Establish sound fiscal policies and maintain accurate records. Develop a workable budget, keeping in mind the needs, requirements and expectations of the community. Establish reserve funds.

**Condo Association:** A Condo association (Condo Owner Association) is an organization in a subdivision, planned community, or condominium building that makes and enforces rules for the properties and residents. Those who purchase property within a Condo Association's jurisdiction automatically become members and are required to pay dues, which are known as COA fees. The Avalon building's Condo Association is separate from the Town Shores' Master Condo Association.

**Fining Review Committee Membership – (FRC):** The BOD shall appoint a Fining Review Committee (FRC) which shall be charged with determining whether there is probable cause that any of the provisions of the Association's Governing Documents have been violated, and which shall conduct hearings and render decisions with regard to the levying of fines as herein provided.

The Fining Review Committee shall consist of not less than three (3) and not more than five (5) owners other than members of the Board who are not officers, directors, or employees of the Condo Association, or the spouse, parent, child, brother or sister of an officer, director or employee of the Condo Association. It is advisable to elect an alternate standby member to the committee in case one of the three regular members is unable to participate. Each committee member's term shall be for one year and may continue if in good standing and by majority consensus of the committee. Volunteers may submit an intention to commit to the FRC when the next opening occurs.

**Governing Documents:** make up all documents that regulate the community, as they apply to the type of association. Governing documents include state laws, Declaration of Covenants (CC&Rs), Master Deed Conditions & Restrictions, Bylaws, Condo Association Rules & Regulations, and Plats of Survey and Easement Agreements.

**Owner(s):** Reference in this policy to owner(s) means owner(s) of the condo to which a possible violation was identified in the Avalon building.

**The Avalon Blue Book:** Declaration of Condominium By-Laws, Articles of Incorporation for Town Shores of Gulfport No. 200, INC, 5840 30<sup>th</sup> Avenue South, Gulfport, FL 33707

## IX. Attachments:

- 1 - Template BOD Notice of Non-Compliance Violation Letter
- 2 – BOD Fining Communication Log
- 3 – FRC Hearing Communication Log
- 4 – Template FRC Notice of Hearing Letter
- 5 – Template FRC Notice of Hearing Decision Letter
- 6 - FRC member Intent to Volunteer form
- 7 – FL Statute Florida Statutes §718.303 current as of February 2023