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CHANGES IN THE LAW GOVERNING FINING FOR CONDOMINIUM AND HOMEOWNERS ASSOCIATION

Many condominium and homeowners associations utilize fining as an effective way to gain compliance with the association's governing documents. The goal should not be to increase revenues for the association, but to utilize a relatively cost efficient remedy which has a built-in deterrence factor. The result of an association fining a member for a violation of the governing documents many times results in compliance.

In the past, both condominium and homeowners associations only had the authority to levy fines if such authority was provided in the association's governing documents. However, due to the recent changes in both the Homeowners Association Act and Condominium Act, which went into effect in July, 2010, the language requiring that such fining authority be in the governing documents was removed. Therefore, there is now arguably a statutory right to fine a member, or such member's tenants, guests, invitees or licensees. For both a condominium and homeowner association, fines may not exceed One Hundred (\$100.00) Dollars per violation and may not, in the aggregate, exceed One Thousand (\$1,000.00) Dollars for a continuing violation. A fine may also not be levied unless it is approved by an independent fining committee made up of members of the association who are not directors, officers or employees of the association or a family member of such person.

Another important recent change in the law arguably provides a homeowners association with the authority to lien for a fine of One Thousand (\$1,000.00) Dollars or more. Specifically, Section 720.305(2), Fla. Stat., states, "A fine of less than One Thousand (\$1,000.00) Dollars may not become a lien against a parcel." Previously, no fine in a homeowners association could constitute a lien on the property. Additionally, the Homeowners Association Act allows a fine for a continuing violation to exceed One Thousand (\$1,000.00) Dollars if such authority is contained in the association's documents. Therefore, although the statute provides a homeowners association with the authority to levy fines up to One Thousand (\$1,000.00) Dollars, homeowners associations may wish to consider amending their documents to allow for the imposition of fines in excess of One Thousand (\$1,000.00) Dollars for a continuing violation.

It is important to note that, for a condominium association, a fine may not exceed One Thousand (\$1,000.00) Dollars in the aggregate, nor may a fine constitute a lien on a condominium unit.

Homeowners associations are encouraged to consult with counsel to determine their authority to lien for the collection of certain fines, including discussing with counsel the possibility of proposing an amendment to the governing documents to increase the amount by which an association's may fine an owner or such owner's tenants, guests or invitees. In this regard, both homeowner and condominium associations are encouraged to consult with their counsel regularly to discuss their authority to levy fines and the procedures required for the levying of fines.

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