

2019 Florida Statutes
Title XL Real and Personal Property
Chapter 720.305 Obligations of members; remedies at law or in equity; levy fines and suspension of rights

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0720/Sections/0720.305.html

- * A fine may not exceed \$100 per violation against any member.
- * A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents.
- * A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.
- * A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner.
- * An opportunity for a hearing before a *committee of at least three 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 role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.
- * The association must provide written notice of such fine or suspension by certified mail or hand delivery to the parcel owner.
- * The fine payment is due 5 days after the date of the committee meeting at which the fine is approved.

Magnolia Terrace HOA Violation process overview:

<https://www.theledger.com/news/20180601/enforcing-community-association-rules-by-imposing-fines>

- 1 Establish a Fine Committee:
 - Fine committee members cannot be officers, directors or employees of the HOA.
 - Must be a minimum of 3 members. (Selecting an odd number is encouraged to avoid deadlock).

After establishing the fining committee, and upon the occurrence of a violation, the association's board of directors may place the violating resident on notice of the violation.

- 2 Place violator on notice of the violation with "courtesy notice". This notice should contain:
 - Nature of violation
 - Rule or regulation being violated
 - Provide a reasonable time to remedy the violation (7 working days)

If the violation remains uncured, the association is permitted to impose a fine; however, the violator must be provided with an additional notice before the fine can take effect, stating they have 14 days to request a hearing in front of the fine committee to dispute the validity of the find before it is imposed.

- 3 Hold a Fine Committee hearing.
 - If homeowner requests the hearing, they are invited to appear to dispute validity.
 - Committee either imposes or overturns the fine levied by the board.
 - If overturned, the matter ends and fine is no longer actionable.

If the violator fails to request a hearing, for any reason, the fine can be imposed immediately at the end of the 14 day period. Law allows (5) days for payment to HOA.

- 4 Board prepares fine invoice and transmits to violator allowing (5) days for payment.

The association may levy reasonable fines. A fine may not exceed \$100 per violation unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the non-prevailing party.

Magnolia Terrace HOA Violation process step by step detail:

Step 1: HOA board form the committee:

Board of directors must create a fining committee (also called covenant/fining/grievance/violation committee).

Committee must be comprised of three owners.

Members cannot be directors or spouse or family of a director.

The board of directors informs Fine Committee.

The committee is not the responsible party to identify the violation and issue the violation notice.

The committee must remain impartial.

Committee must be named and approved at an open meeting of the board of directors.

Step 2: HOA board begins the HOA Violation process.

A. Association/management identifies the violation and votes to proceed.

B. Send **Courtesy Notice** to homeowner identifying the violation and giving 7 working days to remedy via hand carry, email or USPS mail.

C. If no action taken to remedy violation, send **Final Notice** to homeowner via Certified or other mail proving receipt.

1. Description of the violation,

2. Authority in governing documents to cite the issue as a violation,

3. A picture (optional),

4. The required timeframe to correct the violation (7 working days), and

5. Disclosure of his/her 14-day right to be heard before the fining/grievance committee.

6. Alert fining committee of the violation sent, including description of monetary fine, and schedule a hearing.

7. Complete the violation record.

8. Send notice of final decision to owner/resident.

9. If fine is approved, then send invoice to homeowner.

10. If fine is not paid, send non-payment of fine, collection notice to owner.

12. For non-payment beyond 30 days, send legal letter of non-payment followed by small claims lawsuit. Prevailing party is awarded attorney's fees.

Step 3: HOA board Vice President and Secretary

Alerts Fine Committee of impending actions.

Step 4: Send a 14-Day Notice:

Violator (owner) must be given a 14-day written notice and an opportunity for a hearing before a fine may be imposed.

Notice must state the violation and 14-day right to be heard (their day to defend themselves and state their reason for the violation, if any.)

Step 5: Vice President and Secretary Coordinate Committee Hearing Date and Time with Violator:

Document any attempts made to coordinate the hearing.

Include who made the call, what time, whom spoken to, notes of call, etc.

Documentation is key. The violator's defense may be that notice was not provided.

Step 6: At the Hearing:

The violator will have the opportunity to present their facts and defenses to the committee.

A decision does not have to be made at the hearing.

After hearing all the facts, the committee decides whether the fine should be "confirmed" or "rejected."

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

In the event the violator does not request to be heard or fails to appear at the hearing, the hearing should continue and decision on fining made by the committee.

Step 7: Committee Reports to the Board of Directors— "Confirm" or "Reject" Fine:

The board of directors then imposes the fine if confirmed by the committee.

Step 8: Imposition of Fine:

Treasurer prepares invoice containing details of fine(dollars per day violation(s) occurred.

Send invoice to ownerr, by mail or hand delivery, of the amount of the fine and date due.

The fine is due five days after the date of the committee meeting at which the fine is approved.

Step 9: Non-payment of Fine:

Send to collection department or attorney.

If fine is 90 days past due, proceed to suspension of voting rights and use of common elements.

All suspensions must be approved at a properly noticed board meeting.

Notice of suspension must be sent to owner and tenant, if any.

Step 10: Non-compliance of Violation:

Bring an Action for Damages or injunctive relief, or both. Consult with your association attorney.



Post Office Box 560252
Montverde, FL 34756

Homeowner name

Homeowner address
Montverde, FL 34756

Date prepared:

Subject: HOA Violation Phase __, Lot __

Dear Homeowner,

The Board of Directors of your Homeowners Association is required to enforce the Covenants of the Association to ensure that agreed upon standards are maintained and that neighbors are not adversely affected. We draw your attention to some recent observations that you are required to address.

{ Indent and state the violation here. Cite governing document location. }

If you have remedied the violation(s) since it was observed, we thank you. If not, we respectfully request that you correct the problem(s) within 7 working days of receiving this notice.

We appreciate your cooperation in honoring your commitment to your neighbors and as fellow members of the association.

Respectfully,
Magnolia Terrace HOA Board of Directors



Post Office Box 560252
Montverde, FL 34756

Homeowner name

Homeowner address
Montverde, FL 34756

Date prepared:

Subject: HOA Violation Phase __, Lot __

This letter is to advise that you are in violation of Section 4 in Article V and Sections 11 and 26 in Article VI of the Declaration of Covenants and Restrictions of Magnolia Terrace recorded April 10, 2000 in Official Records Book 1811, Page 826, as amended in the Supplemental Declaration recorded August 23, 2007 in Official Records Book 3495, Page 529, as further amended in the First Amendment to Declaration of Covenants and Restrictions of Magnolia Terrace recorded July 26, 2012 in Official Records Book 4178, Page 2241, and further amended in the Declaration of Covenants and Restrictions of Magnolia Terrace Homeowners Association, Inc., recorded in Official Records Book 4327, Pages 529-554 on May 23, 2013 all in the Public Records of Lake County, Florida.

Section 4 in Article V provides in part: Each owner shall maintain the structures, trees, all improvements, and grounds on his lot at all times in a neat and attractive manner. You are in violation because the lot has not been mowed in months. Section 11 in Article VI provides in part: All lawns must be edged at the pavement's edge and at the sidewalk and driveway edges and that lots are to be maintained on a continual basis. You are in violation because the lot has not been edged and because lot has not been maintained. Section 26 in Article VI provides in part: It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot. The restriction applies before, during and after construction. You are in violation because the unmowed and unedged lot is unsightly and unkempt.

You were previously notified to correct the violations; however, to date you have failed to do so. Therefore, the Board has voted to levy a fine of \$\$ per day, commencing DATE. In accordance with §720.305(2)(b), *Florida Statutes*, you are entitled to a hearing conducted by the fine committee prior to the fine being imposed. The fine committee will hold the hearing on DAY, DATE AND TIME at the PLACE to either confirm or reject the fine levied by the Board. You are entitled to attend and present your position to the fine committee. The fine committee only has authority to accept or reject the fine levied by the Board. If the fine committee, by majority vote, confirms the fine, the fine will be imposed.

The Association prefers to resolve violations amicably, however, due to your failure to correct the violations, the Board has moved forward with the fine process. If you have any questions, please contact the Board of Directors.

We appreciate your cooperation in honoring your commitment to your neighbors and the HOA.

Sincerely,

Board of Directors
Magnolia Terrace Homeowners Association, Inc.