

Associations Must Strictly Comply With Notice Requirements to Impose Fines, Liens

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For homeowners and condominium associations, enforcing their rules can be extremely challenging. Many communities are forced to contend with unit owners who are unruly and disruptive, and associations must be able to effectively bring their rights to bear in order to maintain uniform compliance.

However, Florida's laws governing the administration of community associations are very specific as to the requirements for all manner of notices and communications to unit owners. Given the highly specific nature of the statutory notice requirements, Florida's courts are going to demand very strict adherence in order for associations to impose fines and liens against owners and their property.

A ruling last year by the Florida Fourth District Court of Appeal illustrates the severity of the consequences for community associations that do not follow the law to a tee in their notices to unit owners. In *Dwork v. Executive Estates of Boynton Beach Homeowners Association*, the appellate panel reversed the lower court's award of fines because the HOA only provided 13

days' notice of the fining committee hearing to the homeowner as opposed to the statutorily required 14 days.

The case arose over a dispute involving the stipulations in the HOA's governing documents requiring all homeowners to keep their roofs and driveways clean and their fences in good condition. The association notified Jonathan Mitchell Dwork of violations of these requirements multiple times over several years, but he took no action.

Once the homeowner failed to comply with the HOA's certified letters providing deadlines for him to bring his property into compliance, the association sent a notice also by certified mail informing him that 13 days later a hearing would take place before the fining committee to consider his maintenance violations.

The committee meeting took place, its recommended fines were approved by the board of directors, and the HOA sent the owner a notice that he would be fined \$25 per day for each of the three violations if they were not remedied. Again, the owner neither responded to the letter nor took any action to remedy the violations, and the fines began to mount.

The HOA's attorneys ultimately notified the homeowner that they were recording a lien on his property for \$7,500 as the full amount of the accrued fines, which was the maximum allowed of \$2,500 per violation, plus additional fees and costs that brought the total to \$8,135. The lien was recorded against the property, but the homeowner again did not respond.

The association subsequently filed for foreclosure and damages, as well as attorney fees and costs, but the trial court denied foreclosure because the 13-day notice provided by the HOA did not comply with the 14-day notice provision or with the HOA's declarations and bylaws, thereby rendering it unable to enforce its claim of lien. However, despite the HOA's failure to strictly comply with the statutory notice provision, the court awarded it damages as well as fees and costs, reasoning that the "equities of this cause [were] with [HOA] and against [appellant]."

The Fourth DCA found that the lower court properly declined to foreclose on the association's claim of lien because of the lack of the 14-days' notice of the fining committee hearing. The unanimous opinion notes that the statute must be strictly construed because it is clear and unambiguous, and the Florida Supreme Court has held that liens are "purely creatures of statute" that can only be acquired, created or attached to property if the statutes from which they derive are strictly followed.

As to the HOA's contention that substantial compliance with the statute was sufficient, especially given that the owner was not prejudiced by the lack of an extra day's notice, the panel held that substantial compliance was insufficient because the statute specifically requires without exception at least 14 days' written notice of a scheduled hearing. It concluded: "The fact that no prejudice has been nor can be shown is not the determining factor in this case ... The courts have permitted substantial compliance or adverse effect to be considered in determining the validity of a lien when there are specific statutory exceptions which permit their consideration. Section 720.305 does not contain any specific statutory exceptions which permit the trial court to

consider substantial compliance with the notice requirement or lack of prejudice to the person sought to be fined.”

The appellate court also found that the lower court erred in awarding damages to the association for the unpaid fines because of the very same reasons that the trial court correctly required strict compliance in order for the association to perfect its entitlement to a lien. It held that the statute explicitly provides that no fine may be imposed without at least 14 days’ notice, and it does not provide a basis for the court to fashion an equitable remedy. Without strict compliance with the notice provision of the statute, the HOA’s imposition of the \$7,500 in fines was null.

The opinion concludes: “The evidence in this case was clear that the appellant had actual notice of the hearing, yet continued with his longstanding practice of ignoring it in the same way he did with all the prior notices. While the trial court was correct in its view that the equities in this case certainly favored HOA, case law nonetheless compels us to hold that HOA was required to strictly comply with the dictates of Section 720.305(2)(b) to perfect its ability to impose and collect the fines.”

The end result is that the HOA will not be able to fine the homeowner for his past maintenance violations, and it will be responsible for all of the attorney fees and costs incurred to date. The homeowner will be able to continue ignoring the association’s demands until it begins the entire process over again and provides him with 14 days’ advance notice of a new fining committee hearing, fines are accrued, a lien is filed, and the association is able to prevail in court.

Needless to say, the association’s simple mistake of only providing the homeowner with 13 rather than 14 days’ advance notice of the fining hearing proved to be an extremely costly error. Florida associations should take note: The state’s courts will demand strict compliance with owner notice requirements in order for them to assert their rights to impose fines and liens.

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