

Don't Shoot the Messenger, the Bearer of Bad News Can Help Clearing Violations, Avoiding Fines, and Working with Local Government Officials



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Just about every community association in Florida has at one time or another faced a violation of local ordinance, regardless of the municipality governing the community.

From Florida City to Tallahassee, Code Enforcement Officers are trained to investigate, locate and confirm violations of the local code of ordinances on all real property located within their jurisdiction. It is important to realize that these codes have been written and legislated to maintain what is considered baseline requirements for the health, safety, welfare, and value of your property and that of your neighbors.

Navigating the code enforcement process once your community has been issued a violation can be

a daunting task for a volunteer Board of Directors. There are, however, steps that can be taken to minimize the risk that a violation will lead to a fine or lien on your association's property.

1. Do not ignore a warning or first notice of violation.

So many associations that have sought my assistance with code violations could have resolved the issue with a timely response to violation. Ignoring a warning or first notice is to invite fines and a lien onto the property. Once a code enforcement officer is engaged, and has documented a violation in your community they must follow through and press the issue until the violation is cured. Furthermore, ignoring the violation is to ignore the code enforcement officer that is working to enforce the laws of the municipality.

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2. Communicate openly with the code enforcement officer that issued the violation.

Many times the warning or notice of violation does not properly, or completely explain the method of curing the issue. For instance, a condominium needed to upgrade their elevators to add a fireman's key and link them to the building's fire panel. This in and of itself is a complicated and expensive project. The complications involved in curing this issue were compounded by the lack of communication by the association with the code compliance officer. Had this community contacted the officer in a timely fashion and worked closer with the municipality they would have learned long before receiving fines and lien that curing those issues would also require an entirely new fire panel in the building.

3. Document all Communication.

There may be times when a disagreement arises, though rare, between your community and the code enforcement official. In that case it is imperative that all communications with the official be documented in writing, including confirmation of substantive conversations. With this documentation, your community has a greater chance to obtain extensions of time and avoid fines and liens should the matter be referred to a master/magistrate to force compliance.

4. Work to Cure the Violation.

The preferred method of preventing fines and liens on your community property is to cure the violation in the time provided in the violation notice. On many occasions, however, the time provided by the ordinance to cure the violation is

insufficient depending on several factors including: the breadth of the repairs to cure the violation; the cost association with the needed repairs; the time it takes to vet contractors, vote to approve one, and complete the work; etc. The sooner the Board of Directors begins the process of curing the violations, the better the chance to avoid fines. Given these realities, if your community requires a special assessment to make the repairs, or a prolonged compliance period, it is important to make clear to the compliance officer early on so as to obtain realistic deadlines.



5. Remember to Mitigate.

Once the violation is cured, most if not all municipalities provide a method to appeal the total fine charged to the community. The process to do this is as varied as the number of municipalities. Most importantly, there are usually very specific deadlines to apply for mitigation. It is imperative to submit all relevant documentation in a timely manner otherwise the community will have to pay the full fine. Considering fines are usually assessed daily once issued, they can mount to unaffordable levels quickly. Once a lien is filed on the property to secure those fines, it will create obstacles to any member trying to sell their units.

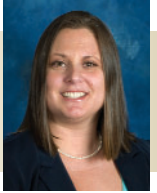
A violation issued to your community should be taken seriously and addressed from the outset. If the Board of

Directors is experiencing difficulties working with the code officers, contractors, or others, involving your legal counsel may assist in resolving those issues.

Board Eligibility Issues

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The Florida Condominium Act provides that there are three instances in which an individual is not eligible to run for the Board of Directors and, thus, should not be listed on the ballot - (1) if he or she has been suspended or removed from the Board by the Division of Condominiums, Timeshares and Mobile Homes, (2) if he or she has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, and his or her civil rights have not been restored for at least 5 years, or (3) if he or she is delinquent in the payment of any monetary obligation due to the association.

The operative date for determining eligibility is the deadline for submitting a notice of intent to run. Thus, if the individual's civil rights have not been restored for 5 years, or he or she is delinquent, on the date that the notice of intent to run is due, his or her name should not be placed on the ballot.

As to delinquency, it is important to note that an individual is not entitled to run if he or she is delinquent in the payment of any monetary obligation due to the association, regardless of how long he or she has been delinquent. This is different than the provision relative to seated officers and directors. The Florida Condominium Act provides that a current officer or director is deemed to have abandoned office only after he or she is more than 90 days delinquent.

Delinquency is set by the condominium documents. For instance, the documents will often provide that payment is due on the first of the month and is deemed delinquent on the 11th of the month. Under this scenario, if payment is due on October 1 and the notice of intent is due on October 15, any individual who has not paid by October 15 cannot be listed on the ballot. However, if a current officer or director is delinquent in his assessment payment, he will not be deemed to have abandoned office until **90 days after October 1**.



Pay Attention to the Division of Florida Condominiums' Investigative Demands



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Ignoring them may cost you dearly . . .

When an owner files a complaint with the Division of Florida Condominiums, Timeshares, and Mobile Homes, the Division will open an investigation into the substance of the complaint. As part of its investigation it is likely that the Division will contact the Association and request that the Association respond to the complaint and to provide any supporting documents. The Division may also request certain particular records of the Association. A recent case, Heritage Circle Condo. Ass'n, Inc. v. State, Florida Dept. of Bus. & Prof'l Regulation, Div. of Condominiums, Timeshares & Mobile Homes, 121 So. 3d 1141, 1142 (Fla. 4th DCA 2013) provides associations with guidance on what could happen if an association ignores the Division's investigative attempts.

In this case, the Division received complaints against an association regarding its failure to prepare annual financial statements and its failure to fund its required reserves. For approximately a year and a half after initiating the investigation, the association continually failed to produce documents requested by the Division. As a result, the Division filed a petition to compel compliance with its investigative demands. A judgment was ultimately against the Association for sanctions and attorney's fees surmounting to almost \$30,000.00.

While the judgment was overturned on appeal as a result of procedural defects in awarding a portion of the judgment, it is important for associations to be aware that the Division has authority to bring an action against an association for failing to comply with investigative demands. Also, heavy penalties may result for associations that decide to ignore the division or respond untimely to their requests. Therefore, it is vital for associations to take these investigations serious no matter how frivolous or legitimate the underlying complaint may be.



Tourist Development Tax

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Who has to pay?

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Section 125.0104, Florida Statutes, establishes the Tourist Development Tax (the "Bed Tax"), which is to be established by the county in which the property is located. The Bed Tax, if established by a county, is chargeable against those who rent, lease, or let for consideration any living quarters or accommodations for a term of 6 months or less, including but not limited to condominiums, mobile home parks, timeshare resorts and others. Specifically, the lessor or individual or entity receiving the consideration for such rental or lease is required to receive, account for, and remit the tax to the county at the time and in the manner provided for dealers who collect and remit the transient rental (sales) tax of 6% to the State under Section 212.03, Florida Statutes.

An association does not incur liability for reporting or paying the Bed Tax based on the mere act of approving leases. Rather, the responsibility for reporting a taxable event ultimately lies with the rental property owner. Furthermore, the association actually has to receive compensation (rent) for

liability for payment of the Bed Tax to attach.

While an association is not responsible for making certain that each owner who rents his or her unit for 6 months or less timely remits payment of the Bed Tax, there are county ordinances that seem to imply that the association must produce official records of the association to aid the county in determining whether a Bed Tax should have been paid. There is a question as to whether a county can compel an association to provide these documents given that it is not the party liable for remitting the Bed Tax. If it is clear that the association is not responsible for paying the Bed Tax, the Board should consult with legal counsel prior to providing the county with access to the association's official records.

A list of the counties that have adopted the Bed Tax and the rates set by those counties can be found by going to http://dor.myflorida.com/dor/governments/county_tax_rates.xls and clicking on "Get a list of Florida counties and their rates (DR-15TDT)."