

THIS IS THE PORTION OF THE STATE STATUTES THAT IS OFTEN OVERLOOKED.

Keeping these in mind when sitting in the Director seat, could save you time and money for your association.

If the DBPR ever, due to a placed complaint, has cause to investigate your Board of Directors or procedures, and a penalty is enforceable, the following guidelines will be used in the process to determine the penalty that will be charged to the Association.



ENFORCEMENT OF FLORIDA STATUTES

By: Division of Condominiums, Timeshares and Mobile Homes Bureau of Compliance.

The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of chapter 718, F.S., and the division's administrative rules. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

These guidelines list aggravating and mitigating factors that will reduce or increase the listed penalty amounts within the specified range and those circumstances that justify a departure from the range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5000.00.

Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule chapter. The factors are not necessarily listed in the order of importance, and they shall be applied against each single count of the listed violation.

A, Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.
2. Financial loss to parties or persons affected by the violation.
3. Financial gain to parties or persons who perpetrated the violation.
4. The disciplinary history of the association, including such action resulting in an enforcement resolution as detailed in Rule 61G-21.003, F.A.C., or Section 718.501, F.S.
5. The violation caused substantial harm, or has the potential to cause substantial harm, to condominium residents or other persons.
6. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after the association received the division's written notification of the violation.
7. The violation had occurred for a long period of time.

8. The violation was repeated within a short period of time.
9. The association impeded the division's investigation or authority.
10. The investigation involved the issuance of a notice to show cause or other proceeding.

B. Mitigating Factors:

1. **Whether current members of the association board have sought and received educational training, other than information provided pursuant to Rule 61B-21.992, F.A.C. on the requirements of Chapter 718, F.S., within the past two years.**
2. **Reliance on written professional or expert counsel and advice.**
3. **Acts of God or Nature.**
4. **The violation caused no harm to condominium residents or other persons.**
5. **The Association took affirmative or corrective action before it received the division's written notification of the violation.**
6. **The association expeditiously took affirmative or corrective action after it received the division's written notification of the violation.**
7. **The association cooperated with the division during the investigation.**
8. **The investigation was concluded through consent proceedings.**

In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. The same right to recover is imposed by law if an association submits a bad check to the division.

MINOR VIOLATIONS:

The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. In no event shall a penalty of more than \$2500 be imposed for a single violation.

Category – BOARD DISCUPTION OF CONDUCT/VIOLATION

Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.

Failure to maintain corporate status.

Improper use of secret ballot or use of proxy, by board members at a board meeting.

Failure to provide a timely or substantive response to a written inquiry received by certified mail.

Improper quorum at unit owner meeting.

Failure of proxy to contain required elements.

Failure to properly notice and conduct board of administration or committee meetings; notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Failure to provide notice of the annual meeting not less than 14 days prior to the meeting.



Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owners meetings.

Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.

Failure to have the authority in the documents when levying transfer fees or security deposits.

Failure to comply with hurricane shutter requirements.

Failure to have the authority in the documents when levying late fees.

Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.

Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines.

Failure to allow unit owners to attend board or committee meetings.

Failure to provide a speaker phone for board or committee meetings held by teleconference.
Failure to employ a licensed manager when licensure is required.

Failure to permit a unit owner to tape record or video tape meetings.

Failure to fill vacancy properly.

CATEGORY - BUDGETS

Failure to timely notice budget meeting, Failure to timely deliver proposed budget. Failure of board to call a unit owner's meeting to consider alternate budget.

Failure to include applicable line items in proposed budget

Failure to show limited common element expenses in proposed budget.

Failure to disclose periodic assessments for each unit in proposed budget.

Failure to propose full reserve funding in proposed budget.

Failure to provide for funding of one or more reserve fund categories in the proposed budget.

Failure to provide the required separate proposed budget for each condominium operated by the association.

CATEGORY – ELECTIONS

Improper nomination procedures in election.

Including a candidate who did not provide timely notice of candidacy

Failure to provide candidate a receipt for written notice of intent to be a candidate.

Counting ballots not cat in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.

Failure to timely hold runoff election

RECORDS

Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.

Failure to maintain a copy of recorded declaration and amendments.

Failure to maintain a copy of recorded by laws and amendments.

Failure to maintain a copy of the articles of incorporation and amendments

Failure to maintain other association records related to the operation of the association.

Failure to maintain a current unit owner roster

Failure of roster to include all elements.

Failure to maintain or annually update the question and answer sheet.

Failure to maintain other association records related to the operation of the association.

Failure to provide address to records.

Failure to budget meeting minutes to reflect adoption of the proposed budget.

Failure to maintain a copy of the receipt for delivery of association records upon transfer of control

REPORTING

Failure to timely provide the annual financial report.

Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.

Improper disclosure I the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosure in the year-end financial statements.

Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statement. Disclosure of multi-condominium reserve/expenses for the association not specific to a condominium is omitted, or is incomplete in the year-end financial statements.

Failure to include the required reserve fund disclosure in the annual financial report.

Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.

MAJOR VIOLATIONS:



The following violations shall be considered major due to their increased potential for consumer harm. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$5000 be imposed for a single violation.

CATEGORY 1 \$6 - \$10 PER UNIT

Assessing -	Failure to assess at sufficient amounts
Board -	Improper compensation of officers or directors.
Budget -	Failure to include reserve schedule in the proposed budget
Commingle -	Commingling reserve funds with operating funds.
Converter Reserves-	Improper use of converter reserves.
Converter Reserves -	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.
Elections -	Failure to provide, or timely provide, first notice of election.
Elections -	Failure to provide, or timely provide, second notice of election or omitting Materials such as ballots, envelopes, and candidate information sheets.
Elections -	Counting ineligible ballots, not counting ballots in the presence of unit owners.
Records -	Failure to maintain election materials for one year.
Records -	Failure to maintain minutes of the meetings.
Reporting -	Failure to maintain minutes of meetings/
Reporting -	Failure to provide year-end financial statements in a timely manner
Reporting -	Failure to provide year-end financial statements using funds accounting.
Reporting	Failure to provide year-end financial statements on an accrual basis.
Reporting	Failure to include one or more components of the year-end financial statements.
Reporting	Failure to make significant reserve fund disclosures in the year-end financials Statements or annual financial report.
Reporting	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.
Reserve	Failure to calculate reserve funds properly.
Reserve	Failure to fund reserves in a timely manner.
Reserve	Failure to follow proper method to waiver or reduce reserve funding.
Special Assessment -	Failure to use special assessment funds for intended purposes.

CATEGORY 2: \$12 - \$20 PER UNIT

Accounting	Insufficient detail in the accounting records.
Assessing	Failure to assess based upon proportionate share r as stated in the declaration of condominium.
Board	failure to follow method of amendment.
Board	Failure to hold annual meeting.
Board	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.
Board	Failure to pay annual fees to the division.
Board	Failure to propose/adopt budget for a given year.
Board	Commingle association funds with non-association funds.
Common	Using association funds for other than common expenses.
Elections	Failure to hold election.
Elections	Failure to use ballots or voting machines.
Elections	Failure to hold runoff election.
Final Order	Failure to comply with final order of the division.
Records	Failure to maintain records within Florida.

Reporting	Failure to provide the annual financial report.
Reporting	Failure to provide year-end financials statements.
Reporting	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles. Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.
Reporting	Providing lower level of reporting for year-end financial statements than required.
Reserves	Failure to obtain unit owner approval prior to using reserve funds for other purposes.

