

38-33.3-209.5. Responsible governance policies - due process for imposition of fines.

(1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

(b) Adopt policies, procedures, and rules and regulations concerning:

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

(V) Inspection and copying of association records by unit owners;

(VI) Investment of reserve funds;

(VII) Procedures for the adoption and amendment of policies, procedures, and rules;

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted, and follows, a written policy governing the imposition of fines; and

(b) (I) The policy includes a fair and impartial factfinding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(3) If, as a result of the factfinding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006. L. 2006: (1)(a), (1)(b)(VI), and (1)(b)(VII) amended and (1)(b)(VIII) added, p. 1219, § 7, effective May 26. L. 2008: (2) and (3) added, p. 556, § 2, effective July 1. L. 2009: (1)(b)(IX) added, (HB 09-1359), ch. 257, p. 1164, § 1, effective August 5. L. 2011: (1)(b)(II) amended and (4) added, (HB 11-1124), ch. 105, p. 328, § 2, effective April 13.