



## Condominium Law Q&A

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**Question** – We are a small homeowners association with under 50 homes. The articles of incorporation and the declaration of covenants and restrictions were duly filed with Volusia County about six years ago. However, the bylaws, under which we have been operating for the past six years, were apparently not filed. What are the consequences of this omission? Should we do it now? How should we correct current issues that are not in compliance with Florida Statutes? B.C., New Smyrna Beach

**Answer** – While the Condominium Act requires that the bylaws be attached as an exhibit to the declaration, which must be recorded in the public records to establish the condominium regime, there is no similar mandate in the Homeowners Association Act. While it is customary to for a homeowners association's articles and bylaws to be recorded [Doing so gives them higher authority.], the failure to do so is not a fatal flaw. The bylaws are part of the official records of the association and must be available for unit owner inspection. In a condominium, an amendment of the declaration, which presumes amendments to the exhibits, including the articles and bylaws, is not effective until recorded in the public records. Given that the Homeowners Association Act doesn't mandate the bylaws be recorded, the assumption is that amendments to the bylaws are effective when passed. That said, it is best to record the articles and bylaws so that all lot owners and their successors are on notice of the condition of lot ownership.

**Question** – I have a question regarding the use of reserve funds. I live in a small (66 homes) homeowners association, and we have been budgeting money annually for reserves. I was under the impression that reserve funds were designated for physical items, such as buildings, pool, roads and infrastructure. In addition, each year, money is put in our annual budget to maintain the common preserve areas as mandated by the Martin County Growth Management Division. We have a schedule, and we are bringing these areas into compliance. It has been suggested that we use reserve money to clean up these areas all at once. Is it legal or proper to use reserve funds in this way? Would really appreciate a definition of the proper use of reserve money. R.I., Stuart

**Answer** – In a condominium, both the establishment and use of reserve funds are statutorily regulated. The Homeowners Association Act is silent on both the establishment and use of reserve funds. Accordingly, it is pretty much up to the mandates of the individual homeowners association documents, and/or the business judgment of the board, to determine how to utilize reserves.

**Question** – On more than one occasion, you have stated in your column that homeowners associations can levy fines, which do not exceed \$100 per violation, or \$1,000 total. While Florida Statutes 720.305(2) does state that the association may levy fines not to exceed \$100 per violation, or \$1,000 in the aggregate, the statute also states, unless otherwise provided in the governing documents.

Our governing documents, specifically the declaration of covenants, state that the association may impose reasonable fines not to exceed \$250 per day and the fine may be re-imposed each day until the matter is corrected. There is no mention of an aggregate. You also state that a fine cannot become a lien against the property. I see no mention of this in Chapter 720. Our declaration of covenants provides that the fine shall be an assessment and lien against the lot involved and may be enforced and collected as any other assessment. R.K., Oak Hill

**Answer** – You are correct, your homeowners association documents allow for fines in excess of the statutory limitation. That said, Section

720.305(2) of the Homeowners Association Act clearly states that a fine shall not become a lien against a unit. The Homeowners Association Act also grants to the grievance committee/board the right to suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests or invitees, or both, to use common areas, provided that the covenants call for same. In addition, in a homeowners association, if the member is delinquent in the payment of assessments beyond 90 days, the member's right to vote can be suspended. A condominium association is not afforded these additional powers. No rhyme or reason for the differences between the Acts, it's just the way it is.

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