

**Review of Proposed New Strand Master Governing Documents
Issued 11-19-2021**

**Declarations - Section 14.1 - Fines; Suspensions
by RJ Polizzotto 12-7-2021**

This section states: (Areas highlighted for clarity):

14.1 Fines; Suspensions. The Board may levy fines and/or suspensions against Members, or Members' tenants or guests, or both, who commit violations of Chapters 617 or 720 of the Florida Statutes, the provisions of the Master Association Documents, or the Master Association's Rules and Regulations, or **who condone such violations by their family members, guests or lessees**. Fines shall be in **amounts deemed necessary by the Board** to deter future violations, but in no event shall any single fine exceed an amount **determined by the Board from time to time**. **As allowed by law fines shall be secured by a lien on the Owner's Parcel**. Suspensions of the use of the Owner's Entrance at the front and back gates and common non-essential services (e.g. bulk cable TV and/or internet) may be imposed for a reasonable period of time **to deter future violations**.

1. The first sentence includes the words “**who condone such violations by their family members, guests or lessees**”.

This statement seems like an infraction on privacy rights and should be eliminated since actions by guests are already covered in the preceding words of this sentence.

- a. How does the Board plan on investigating, interrogating and then determining if someone “**condones**” a violation?
- b. What are the metrics to make such a determination?

2. The Second sentence states: "Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any single fine exceed an amount determined by the Board from time to time".

a. The first part of the sentence leaves it open to a Board's discretion to determine the amount of any fine imposed on a member, e.g. \$100, or \$200 or \$1,000, etc.. Without limits, the Board has unlimited power over their members. Furthermore each future subsequent Board can create new limits as they see fit.

1. How is the Board going to determine how much a fine should be to punish someone "to deter future violations"?
2. Once the Board establishes a fine amount for a particular violation, does that amount become the standard for similar violations or can the Board decide to change the amount for the same type of violation?

Your proposed 14.1 second sentence should be revised and the statement changed to "Fines shall be in amounts as allowed by law". Delete "~~deemed necessary by the Board to deter future violations~~". This will avoid any prejudicial determination for a fine. Currently, Florida Law limits the fine amount to \$100 per day, which seems reasonable by all standards.

b. The second part of the sentence states: "but in no event shall any single fine exceed an amount determined by the Board from time to time".

This portion of the sentence gives the Board unlimited power on the maximum amount of the fine. Please note that the previous 2015 Amended Documents had a \$2,000 maximum fine limit per violation. The Proposed documents sent to us in Feb. 2021 and March 2021 replaced the limit with "the maximum amount allowed by law", which is reasonable. However these New Documents **have completely eliminated any limits** and leave it up to the Board to decide what the maximum limit is to be imposed on a member for a violation.

Allowing the Board, "from time to time", to impose any maximum fine amount that they feel is necessary to "deter future violations", e.g. \$2,000, \$5,000, \$10,000, \$20,000, etc. has the potential of leading to further prejudicial fines against specific members and a Board could become a very controlling and autocratic body of Directors.

1. Why did you eliminate both safeguards and allow the Board to set any limit they want against the members giving the Board unlimited power?

I recommend that for the maximum limits, either the statement “**as allowed by law**” or a specific dollar amount should be re-instated in the Proposed Documents.

(PS: I’m really concerned that this subtle but major change (i.e. changed from “allowed by law” to “determined by the Board”) was never mentioned in any of the comments to the members.)

3. The next sentence states: "**As allowed by law fines shall be secured by a lien on the Owner's Parcel**". Florida Statutes section 720.305 (1) specifically states that fines under \$1,000 cannot be a lien on a member's property.

- a. Is the Florida Statute statement applicable with regards to this Section?

4. The last sentence of Section 14.1 states: "**Suspensions of the use of the Owner's Entrance at the front and back gates and common non-essential services (e.g. bulk cable TV and/or internet) may be imposed for a reasonable period of time to deter future violations**".

- a. Does this statement mean that suspensions of the use of Common areas may be in addition to any fines or can they be separate, e.g. only suspension and no fine?
- b. Since a member pays for basic cable and internet service (i.e. through their quarterly fees), what legal authority allows the Master to suspend a service that has already been paid for by a member?
- c. What was the reason that the words “**to deter future violations**” was added to the end of the last sentence? Florida Statutes clearly allows suspension of Common Areas and other services.

Finally, this last sentence states that the Board can suspend a member's internet service due to a violation because the Board considers the Internet Service a non-essential service and not a utility service (which is prohibited by law from being suspended).

- d. What legal standing determined that a member's internet service is a non-essential service?
- e. This determination by the Board is concerning because if a member uses the internet for business or employment, suspending this service would in essence deprive them of their livelihood. Is that acceptable by law?
- f. Some members use the internet, via Comcast, for their only phone line in their home. If a member's phone is cut off by the Board (i.e. suspended internet), isn't that a liability if the member isn't able to call local services in an emergency?
- g. Finally, per the Proposed Section 14.1, does the Master Board have the right to **suspend an entire Neighborhood's internet** service if that Neighborhood Board fails to pay an assessment, fine or is in violation of the Documents or rulings made by the Board?

I recommend that the last sentence in this Section 14.1 be changed with the following words deleted:

Suspensions of the use of the Owner's Entrance at the front and back gates and common non-essential services ~~(e.g. bulk cable TV and/or internet)~~ may be imposed for a reasonable period of time. ~~to deter future violations.~~

Add at the end: **Any suspension ends upon full payment of all obligations currently due or overdue to the Association.**

5. Most Communities have published policies that list a sequence of events for fining/violations, for example: sending a warning letter (first notice); second notice; amount of fines for typical offences; escalation amount for repeat offences; etc.

a. Does the Master Board have such a published policy on fines and violations procedures besides what is stated in the Documents?