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RULES ENFORCEMENT

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Overview

- Levels of Authority
- Rules
- Due Process
- Fines
- Other Remedies
- Alternative Resolution requirements



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Levels of Authority

- State Statutes
- Governing Documents
- Rules are trumped by Statutes, Declarations and Bylaws
- Statutes, Declaration and Bylaws *may* create intermediate steps before court enforcement



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State Statutes

HOA / Planned Community

- Washington Homeowner's Association Act (RCW 64.38)
- Oregon Planned Community Act (ORS 94)

Condominium

- Washington "New" Washington Condo Act (RCW 64.34) (July 1, 1990)
- Washington "Old" Horizontal Property Regimes act (RCW 64.32) (1963)
- Oregon Condominium Act (ORS 100)



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State Statutes continued

- Washington Nonprofit Corporations Act (RCW 24.03)
- Oregon Nonprofit Corporations Act (ORS 65)



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Powers

- Adopt rules
- Impose charges for late payments of assessments
- Levy reasonable fines after notice and an opportunity to be heard
- Exercise powers necessary and proper for the governance and operation of the association



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“Now! ... *That* should clear up a few things around here!”



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Rules

- Make sure there are no conflicts with higher levels of authority including Federal Laws (ADA , FHA etc.)
- Rules must be reasonable and practical
- Rules must be applied equally and consistently
- Rules are community specific in light of common needs and expectations
- Often are brought into effect by Board Resolution or can be adopted in a Board meeting and reflected in the minutes with direction to incorporate it into the compilation of existing rules
- Must be written



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“Perhaps we should send a letter ?”



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Due Process

- Notice and opportunity to be heard
- In writing
- Declaration or Bylaws will often provide the process details
- Notice
 - Notice should describe the alleged violation, the rule and the authority in sufficient detail, set forth the fine or action to be taken and offer an opportunity to request a hearing (Tip: require the owner to request a hearing in writing)
 - Notice should be drafted to diffuse emotions and offer an explanation
 - Levels of Written Notice: Warning with opportunity to correct, Notice of Fine, Subsequent Notice



Due Process continued

- Hearings
 - Should be conducted with a quorum of Board Members attending or before a designated committee with at least two Board Members present if governing docs allow
 - Adopt hearing procedures by Board Resolution and disseminate them to owners along with a fine and fee schedule.
 - Give an owner a reasonable time to explain their side. Avoid debate and keep minutes
 - Provide concise written decision to the owner without delay



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Fines

- Fines should be treated as unpaid assessments for allowing a lien claim
- Must adopt and mail any fine schedule to each owner
- Fines must be reasonable and simple to apply
 - Single incident (trash cans) with one time charge for that month
 - Ongoing transgression (yard care) with daily charge until resolved
- Must not conflict with state statutes or governing documents
- Keep an accurate and current ledger



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Other Remedies

- Record a claim of lien against the property
- Termination of access or Use of Common property
- Mediation (sometimes can be mandatory)
- Obtain an injunction through lawsuit *
- Obtain a money judgment through lawsuit and garnish wages *
- Foreclose on the property through lawsuit



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Alternative Resolution

- Look both ways before you cross the street to sue
- An offer to use an alternative resolution program is mandatory for Oregon HOAs and COAs (see ORS 94.630(4)(a) and (f) and 100.405(11))
- Check the Declaration and Bylaws for mandatory provisions. Some governing documents make arbitration or mediation mandatory before pursuing a lawsuit for an injunction, money judgment or foreclosure on unpaid fines



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Q & A

THANK YOU

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