

Reasonable Reactions

Rulemaking and Rule Enforcement

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We urge you to consult your attorney concerning your particular factual situation and any specific legal questions you may have.

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Overview

Part 1

Authority, Creating Enforceable Rules, Establishing Reasonable Fines & Fee Schedules, Violation Letters, Notice & Opportunity to be Heard

Part 2

Enforcement Actions from Start to Finish, Options for Noncompliance, Lawsuits, Key Provisions Workshop

Part One

- Authority for Rulemaking & Levying Fines
- Creating Good, Enforceable Rules
- Establishing Good Enforcement Policies & Reasonable Fine Schedules
- Violation Letters
- Notice & Opportunity to be Heard

Authority to Act

- Associations Created by Statute
- Statutes
- Governing Documents
 - Declaration / CC&Rs
 - Bylaws
 - Rules

Authority to Make Rules

- **Condos**

“Subject to the provisions of the declaration, the association may . . . Adopt and amend bylaws, rules and regulations.” RCW 64.34.304(a)

- **HOAs**

“Unless otherwise provided in the governing documents, an association may . . . adopt and amend bylaws, rules and regulations.” RCW 64.38.020(1).

- **Old Act Condos**

No statutory authority for rulemaking. Look to declaration, bylaws or articles of incorporation.

Relationship of Rules to Other Governing Documents

- Rules may supplement other governing documents
- Rules may not contradict other governing documents
- Governing documents may signal need for supplementation by rule

. . . authority to levy fines

- in accordance with a previously established schedule thereof adopted by the board of directors and
- furnished to the owners
- for violations of the declaration, bylaws, and rules and regulations of the association
- Condos – RCW 64.34.304(1)(k)
- HOAs – RCW 64.38.020(11)
- Old Act Condos – no provision

Good, Enforceable Rules

- Comply with Federal Law
- Comply with State Laws
- Comply with other governing documents
- Should Not be Created at the time of controversy; “named” rules are not a good idea
- Are in the best interests of the Association as a whole
- Are Reasonable

Enforcement Policy

- Resolution & Policy together
- All Enforcement-Related procedures in one place
- Provides Additional Notice to Owners when Policy is Published
- Cites Board's Authority
- Like a "Cheat Sheet" for Procedures
- Contains Fines & Fee Schedule
- Easy to Attach to Violation Letters
- More Easily Changed or Amended

Fine Schedule

- Fines must be in a published schedule
- Fines should be specific amounts, not “costs”
- Should be different fines for different violations
- Amount must be reasonable based on community
- Set amount to deter the action
- Consider “ongoing” fine vs. one-time violation

Procedural Contents of Effective Enforcement Policies

- Date Adopted by Board
- Affidavit of Mailing
- Effective Date
- Statement that all prior policies are superseded (or all inconsistent policies)
- “Publication of the policy is notice to all owners and no further notice required unless otherwise stated”

Notice / Violation Letter



Dear Homeowners Association,
Thanks for the letter informing my bushes need to be trimmed.

Notice / Warning Letter Should Contain:

- The specific conduct complained of
- The provision or rule violated
- When the violation occurred
- What the owner must do to remedy the problem
- Whether a fine *will be imposed* if the problem is not remedied
- That the owner has an opportunity to be heard **PRIOR** to a fine being levied
- Other consequences if action not taken

How to Serve Warning / Violation Notices

- Check the governing documents for notice provisions
- Check timing for opportunity for hearing
- Try to give actual notice
- Be reasonable with response dates

Opportunity for a Hearing

- Only “opportunity” required by statutes, but read governing documents carefully
- Hearing is NOT a trial
- No 6th amendment rights to attorneys, to confront accusers, etc.
- Procedures dictated by governing documents
- Do not make it too difficult!

Part Two

- Enforcement Actions from Start to Finish
- Options for Noncompliance
- Lawsuits
- Key Provisions Workshop

Enforcement Actions

- Association Police Power
- Association Charged with Enforcing the Governing Documents
- Not just **Rules** Enforcement – All Governing Documents
- From Owner Complaint to Lawsuit
- Focus on Effective Enforcement

Enforcement Procedures

- Overarching Concept is “Due Process”;
Notice & Opportunity to be Heard
- Pre-Litigation Stages
 - Complaint
 - Investigation
 - Violation Letters
 - Request for Hearing
 - Hearing
- Lawsuit

Complaint

- Depending on governing documents, can be specific procedures
- Anonymity should not be guaranteed
- Safety concerns vs. right to confront accuser
- Official communications should be separate from personal board emails

Investigation

- Does the conduct complained of violate the governing documents?
- BE REASONABLE
- Check your governing documents
- Specific investigative requirements unusual
- Ask basic questions
- Association ultimately takes on the burden of proof



Violation Letters

- Content of violation letters in part one
- Often warning letter first
- Violation notices should be numbered: “First Violation Notice for _____”
- Ensure violation letters are properly served and provide actual notice
- Keep copies for your file & proof of service

Requesting a Hearing

- Provide owner with a few dates or window of time for hearing
- If owner requests a hearing, procedures of hearing can be identified at that time
- Require owners to identify presence of attorneys or witnesses ahead of time
- Make reasonable accommodations

Enforcement Hearings

- May be determined by governing documents
- Conducted by the Board
- Otherwise, wide variety of procedures for hearings acceptable
- No 6th amendment rights to attorneys, to confront accusers, etc.
- Do not deliberate publicly

Result of Hearing

- Governing documents may have procedural requirements
- Otherwise, render written decision within a reasonable time
- Reasonable and consistent decisions
- Potential outcomes should be limited to confirming the violation or not

Options for Noncompliance

- Collect Fines
- Affirmative Relief
- Escalate Fines & Repeat
- Lawsuit

Collecting Fines

- Check if your governing documents treat fines as assessments and if not, amend
- If fines are assessments, treat delinquent fine as delinquent assessment
- Collections procedures include potential liens, threats of foreclosure, no defenses

Affirmative Relief

- Require owner to comply within specific time frame
- If owner does not comply, ensure that Association has authority to correct violation
- If Association can correct violation, ensure that Owner can be *charged*



Lawsuit

- Consult with an attorney
- Always consider whether action is in the best interest of the Association
- Ensure all internal procedures have been followed & good documentation
- Be reasonable
- May be necessary for certain remedies such as entry into units

Entry into Units / Lots

- Attempt voluntary compliance
- Obtain court order
- Give owner notice of day/time of entry and copy of court order
- Request sheriff / local law enforcement assistance

Attorneys' Fees

- Condo Act's attorney fee provision allows fees for failure to comply with "any provision of the declaration or bylaws" RCW 64.34.455.
- HOA Act provision may award fees for "any violation of the provisions of this chapter"
- Attorneys fees are generally recoverable in collections actions
- Look to Governing Documents



Enforcement Worksheet

Governing Documents

Order of Review

- Enforcement Policies
- Fine & Fee Schedule(s)
- Rules and Regulations
- Bylaws
- Declaration (“*CC&Rs*” or “*Covenants*”)

Enforcement Worksheet

ENFORCEMENT CHEAT SHEET

Association:

Registration Expires:

- Condominium (decl after 7/1/90)
- "Old Act" Condominium (decl before 7/1/90)
- HOA

Rules & Regulations

Date adopted:

Date published to owners:

Date effective:

Amendments/Relevant Resolutions:

Enforcement Policy / Fine & Fee Schedule

Date adopted:

Date published to owners:

Date effective:

Amendments:

Enforcement:

Event	Provision	Citation
Fines		
Fees		
Where to Send Notice		
Notices		
Hearings procedure		
Other procedures		

Notes:

How to Handle Controversy

- Keep in mind your duty to the Association
- Focus on consistent enforcement
- “Resurrection” letters
- Attorneys

Owner vs. Owner

- Does the complaint involve violation of the governing documents?
- Association involvement / enforcement is not the owner's only recourse
- Owners may enforce the governing documents



Recordkeeping Tips

- Complaints and notices are Association records.
- Keep copies of warning and violation letters
- Calendar response dates
- Keep logs of complaints
- Keep Association business or complaint lines separate from board personal emails or mail

Q&A

CAI and the Washington State Chapter of CAI

Thank you!

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