#### Reasonable Reactions Rulemaking and Rule Enforcement

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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 6<sup>th</sup> 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

- Ones 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 6<sup>th</sup> 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**

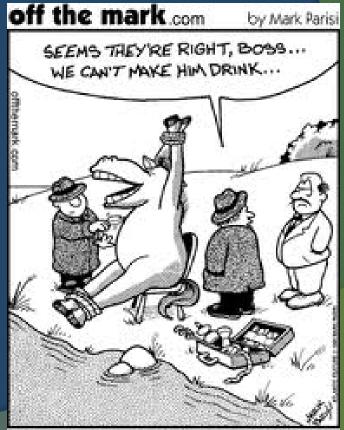
- Collect Fines
- Affirmative Relief
- Escalate Fines & Repeat
- Lawsuit

### **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



Mark Parisi, Permission required for use.

#### Lawsuit

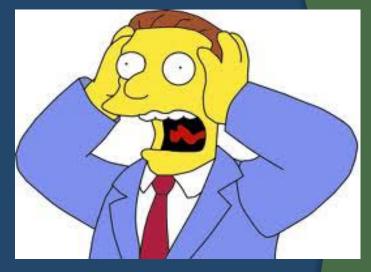
- Consult with an attorney
- Always consider whether action is in the best interest of the Association
- Ensure all internal procedures have been followed & good documentation
- Be reasonable
- May be necessary for certain remedies such as entry into units

# **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**

- Ones 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





# CAI and the Washington State Chapter of CAI

#### Thank you!

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