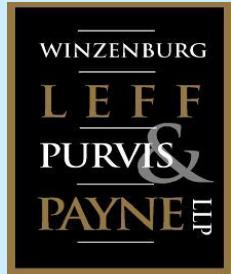


# Budget Ratification and Covenant Enforcement 101 for HOAs

*Attorneys at Law*  
8020 Shaffer Parkway, Suite 300  
Littleton, CO 80127  
303.863.1870 Telephone  
303.863.1872 Fax  
[www.cohoalaw.com](http://www.cohoalaw.com)



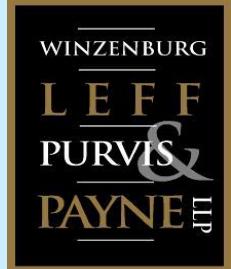
*Focused on Communities*



# Budget Ratification

- CCIOA Communities: HOAs created on or after July 1, 1992
- Pre-CCIOA Communities: HOAs created prior to July 1, 1992





# Budget Ratification for CCIOA Communities

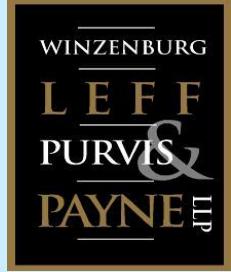
- Board adopts a proposed budget for common expenses and reserve contributions
- Within 90 days after adoption of the proposed budget, the proposed budget or a summary of it must be sent by first class mail or other form of delivery to the owners, along with a Notice of Meeting for the membership meeting to consider the proposed budget. The meeting must be held within a reasonable period of time. (Follow your Bylaws for the Notice of Meeting requirements and setting the date of the meeting. Budget ratification can be handled at the Annual Meeting or a Special Membership Meeting. If Bylaws don't define the notice timeframe, set the meeting date not less than 10 days or more than 50 days after the proposed budget/summary and Notice of Meeting are mailed/delivered.)
- At the meeting to consider the proposed budget, **the proposed budget is automatically approved unless 51% of all owners** (or a larger percentage as may be specified in the Declaration) **vote to veto the budget**. A quorum need not be present for the proposed budget to be ratified.
- IF the proposed budget is vetoed, the budget last ratified stays into effect until a new budget is ratified (meaning it hasn't been vetoed).



# Budget Ratification for Pre-CCIOA Communities

- If your Declaration has a voting/approval requirement, then follow what the Declaration requires for budget approval.
- If your Declaration is silent on budget approval and permits the Board to set the budget and assessments, follow the budget ratification provision of CCIOA for CCIOA Communities outlined in the previous slide. In such a case, the proposed budget will be automatically approved unless 51% of all owners vote to veto the proposed budget.
- The budget ratification provision of CCIOA doesn't apply to Pre-CCIOA Communities where the Declaration sets a maximum assessment amount or limits the amount of an increase and the proposed budget complies with either of these requirements. However, you will still need to follow the notice requirements and hold a meeting to *discuss* the proposed budget.

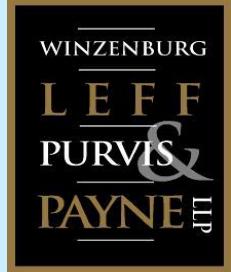




# Covenant and Rule Enforcement



*Focused on Communities*

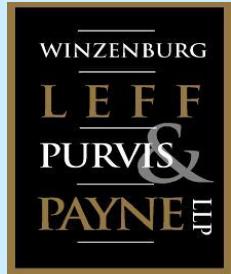


# Directors Have Fiduciary Duty To:

- Comply with and Enforce Covenants
- Comply with and Enforce Rules & Regulations



*Focused on Communities*

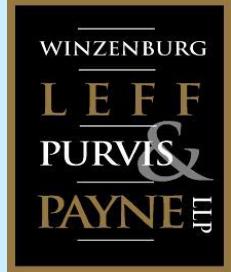


# “Covenants” are found in:

- Condominium Declaration
- Declaration of Covenants, Conditions & Restrictions

For our purposes, we will focus on Covenants found in your HOA's Declaration. These covenants “run with the land” and are binding on all present and future owners of the property.

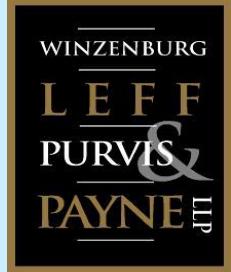




# Covenants Commonly Found in HOA Declarations:

- Requirement to pay assessments
- Requirement to maintain, repair, replace specified portions of your Unit/Lot
- Requirement to maintain specified insurance coverage
- Requirement **To Do OR Not To Do** certain things in the Community (“Use Restrictions”)

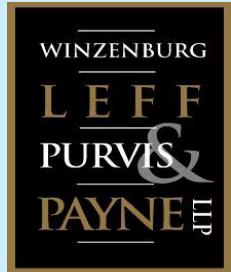




## Commonly Found Use Restrictions:

- Prohibitions/Restrictions on pets
- Restrictions on leasing
- Restrictions on parking recreational vehicles and trailers in Community
- Restrictions on window coverings
- Restrictions on improvements without architectural approval



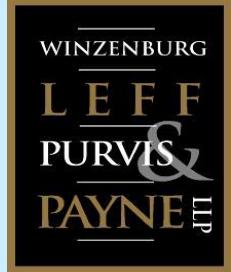


## “Rule”

Directive adopted by the Board which requires specified behavior, action or inaction. CCIOA defines as any instrument, by whatever name, adopted for the regulation and management of the community, e.g., rules, regulations, policies, guidelines.

Architectural Guidelines or Design Guidelines are rules that regulate the “improvements” that can be made on an Owner’s Lot or to the exterior of the individual’s Unit.

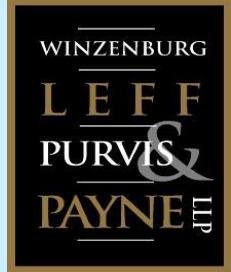




# Rulemaking Authority

- Check your Declaration and Bylaws for Rulemaking Authority
- If your Declaration doesn't address or prohibit the Association from making Rules, CCIOA provides the Association with the authority to "adopt and amend . . . rules and regulations."

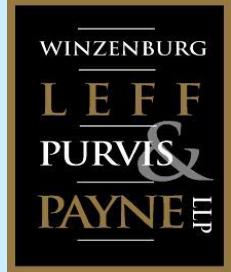




# Tips on Rule Making Authority

- Rules cannot be used to trump your Declaration.
- Rules must be stated in a clear manner.
- Rules must be reasonable and should not be excessive.
- Rules must reasonably relate to a legitimate purpose.
- Rules must be enforceable.

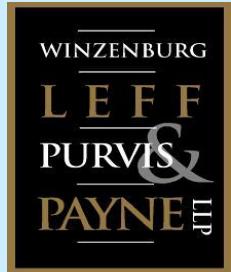




# Successful Enforcement of Covenants and Rules

- Voluntary compliance is always your best bet.
- Consistency in enforcement is critical.
- Prior to levying a fine – ***Notice and Opportunity for Hearing is Required***
- ***Must*** follow your Enforcement Policy – If your HOA doesn't have one, that is your first priority!



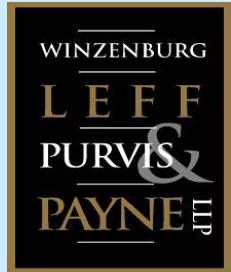


## Step 1. Initial Complaint and Letter

(This process follows the WLPP recommended Enforcement Policy. Your Association's specific policy may be different. As a result, **follow the requirements in your Association's Enforcement Policy!**)

1. Process begins with the filing of a written complaint with or by the Association's Board or management.
2. Board determines whether the allegations are sufficient to constitute a violation.
3. Warning letter is sent to Owner/Resident which includes:
  - A. Details of the complaint;
  - B. Board has reason to believe a violation has occurred;
  - C. Directing the Individual to stop the violation *or* to come into compliance within specified time (e.g., immediately or other period of time).

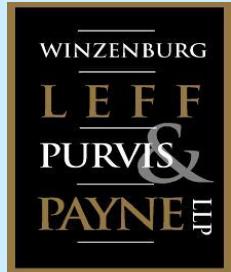




## Step 2. Failure to Comply

1. If following the initial letter the individual **doesn't correct the violation or the same or similar violation subsequently occurs**, a Second Letter is sent.
2. Second Letter includes the following:
  - A. Details of the complaint;
  - B. Actions which may be taken by the Board;
  - C. Right to be heard;
  - D. Date/Time and location of hearing;
  - E. Right of the Board to take action if the Individual doesn't respond to the 2<sup>nd</sup> letter or appear at the hearing.

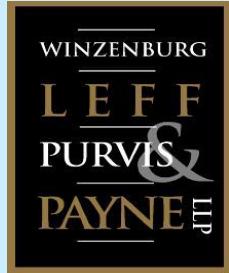




## Step 3. Hearings on Alleged Violations

- Conducted by a Hearing Committee of impartial decision makers
- Held on the time/date/location specified in the second letter *unless individual fails to respond or appear*
- Hearing Committee may:
  - exercise its discretion on how the hearing will be conducted;
  - question witnesses and review evidence;
  - act as it determines is appropriate or desirable in order to reach a just decision.

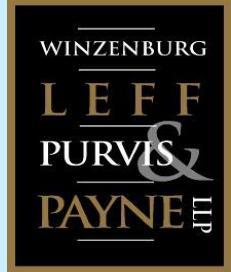




## Step 3. Hearings on Alleged Violations (cont.)

- Individual alleged to have violated a covenant or rule is not required to attend the hearing. If they don't attend, the Hearing Committee may make a decision on the violation based upon the information in the complaint, any written response provided and any other evidence they have on the matter.
- If the individual doesn't attend the hearing and does not file a written response, the Hearing Committee may determine that the failure to appear is a waiver of the right to a hearing, and a No-Contest Plea to the allegations in the complaint, and may levy related fines.

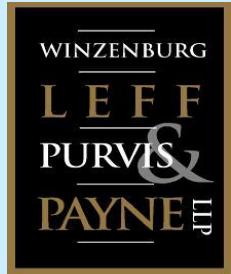




## Step 4. Decision Following Hearing

1. Decision is rendered based upon all relevant facts and circumstances.
2. Decision may be made at the time of the hearing and the effective date of the decision is no sooner than the time specified in the Enforcement Policy.
3. Decision can be made following the hearing and written notice of the decision sent to the Individual's address of record within the time specified in the Enforcement Policy.
4. Decision must be fair and reasonable.

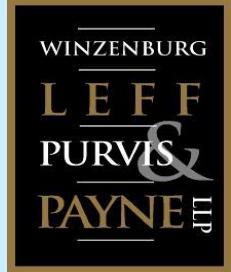




# Options Available for Enforcement

- Assess Fines;
- Suspend Membership Privileges if permitted by governing documents;
- Damage to Association Property – Require Repair/Replacement





# Unique Enforcement Circumstance

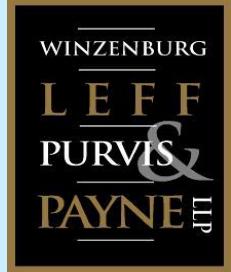
- Habitual Offenders and Continuing Violation;
- Willful and Wanton Violation;
- Responsibility for Actions of Tenant or Guest;
- Violations or Offenses that Constitute a Present Danger



# Thank you APCHA!!!!



*Strengthening Community Through Workforce Housing*



# Molly Foley-Healy, Esq.

Winzenburg, Leff, Purvis & Payne, LLP  
8020 Shaffer Parkway, Suite 300

Littleton, Colorado 80127

Telephone: 303-863-1870

FAX: 303-863-1872

[www.cohoalaw.com](http://www.cohoalaw.com)



*Focused on Communities*