



Covenants & Rules: Enforcing Your HOA's Governing Documents

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Directors Have Fiduciary Duty To:

- Enforce Covenants
- Enforce Rules and Regulations



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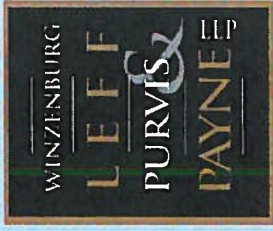
Covenant

“A formal agreement or promise, usually in a contract or deed, to do or not do a particular act.”

Source: *Black's Law Dictionary*

In HOA's – Covenants affect the use and enjoyment of the property.





“Covenants” are found in:

- APCHA’s Deed Restriction
- Condominium Declaration
- Declaration of Covenants, Conditions & Restrictions
- Plat

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.



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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



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“Rule”

Directive adopted by the Board which requires specified behavior, action or inaction.

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 you 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





Step 1. Initial Complaint and Letter

1. Process begins with the filing of a written complaint with or by the Association's Board.
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 14 days.





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 2nd 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 assess appropriate sanctions.





Step 4. Decision Following Hearing

1. Decision is rendered based upon all relevant facts and circumstances.
2. Decision made be made at the time of the hearing and the effective date of the decision is no sooner than 5 days after the hearing date.
3. Decision can be made following the hearing and written notice of the decision sent to the Individual's address of record within 5 days after the decision is made.
4. Decision must be fair and reasonable.





Options Available for Enforcement

- Assess Fines;
- Suspend Membership Privileges;
- Damage to Association Property – Require Repair/Replacement



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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



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Defenses to Enforcement

- Estoppel
- Laches
- Waiver
- Abandonment
- Selective Enforcement
- Rule is Unreasonable or Unclear
- Sanction is Not Reasonable or Excessive





Purpose of these Workshops



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THANK YOU!!



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