

RULES AND REGULATIONS PRACTICAL GUIDELINES FOR HANDLING VIOLATIONS

by

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“Violations” range from petty annoyances to serious threats to personal safety and property. Violations are inevitable because human interaction involving differing lifestyles, personalities, and attitudes toward authority inherently and even just plain ignorance, give rise to non-compliance with Governing Documents (declaration, by-laws, rules and regulations, board policies). This outline suggests methods to deal with violations in a practical and effective manner.

I. Procedure

A. The Illinois courts have repeatedly ruled that the Board must strictly follow its (the Association’s own) procedural requirements.

1. The Illinois Condominium Property Act requires that a person be given notice and an opportunity to be heard before a reasonable fine can be imposed for violation of the declaration, bylaws and rules and regulations. Sections 18.4(l) and 18.5(c)(7).

a. “Notice” means notice of the charges (alleged violation)

- b. “Opportunity to be heard” is the meaningful right to request a hearing at which the alleged violator can confront the evidence against him/her and provide evidence in support of his/her defense.
 - c. “Reasonable” means proportional to the offense, its nature, damage/impact on the Association, and deterrent effect.
- 2. Check the Governing Documents to see if there are additional requirements (for example, a specified notice period and deadline by which a hearing must be conducted). Rules should have specific enforcement procedures – step by step and with applicable forms.
- 3. Fundamental due process must be used. Note the following “rights” of the accused violator:
 - a. Right to a clear and specific description of the charges against you, including the alleged acts or omissions and the section/provision of the Governing Documents allegedly violated by such act or omission.
 - b. Right to a fair and impartial panel to adjudicate the matter.
 - c. Right to confront witnesses and evidence against you.
 - d. Right to produce witnesses and evidence in your defense.
 - e. “Right” to legal counsel does not actually exist for civil (that is, non-criminal matters), but is routinely allowed. If the rules permit the accused violator to have an attorney, the

Association should have its own attorney at the hearing. The rules may permit the accused violator to bring legal counsel for his own consultation but not to participate directly in the hearing; if so, there should be consequences for breach of this protocol (e.g., expulsion of attorney; additional fines).

f. Right not to be subject to “cruel and unusual” punishment. In other words, no excessive fines or humiliation (e.g., dunce cap).

B. Strict compliance is required; the Board may not get away with only “substantial compliance” or compliance with the “spirit” of the requirement.

II. Preparation

- A. Obtain written complaints from witnesses willing and committed to testify.
- B. Get Association attorney involved at the beginning (NOT at the end) of the process.
- C. Determine who (Board, manager or attorney) will handle which steps and stages.
- D. Be self-critical and prepare as if the other side knows all the potential and actual weaknesses of your case.
- E. What does the Board want to accomplish and what is it willing to invest in enforcement proceedings, including possible litigation (time, money and frustration)? Reality check needed.

III. Personalities

- A. While emotional reactions can be expected, the proceeding must not be swayed, tainted or driven by emotion.
- B. Avoid use of inflammatory rhetoric, exaggeration and personal attacks.
- C. Credibility is key – The proceeding must maintain a professional, efficient, even-handed approach so that the result will be accepted even if not liked by the participants and potential third parties.

IV. The Epilogue may actually be the Prologue

- A. If the internal proceedings or results are challenged, legal action may be necessary.
- B. Violator will attempt to get a “second bite at the apple” before a judge or jury that may be very unsympathetic to the Association.

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