

Notice: What does “notice” mean?

Aside from a few specific definitions of “notice” defined by statute, “notice” typically means whatever an Association’s Governing Documents define it to mean. Most Governing Documents contain a specific “notice” provision, stating how notice is given, but the term “notice” typically appears throughout the Governing Documents.¹ Associations are required to reasonably comply with their own notice provisions.^{2 3}

“Notice” may mean more than one thing. It may mean “what” the Association is informing an owner about (i.e. a fine schedule, unpaid assessments, a violation, a budget, a report). There may be specific guidance on what the contents must be for some communications and documents. For example, the required contents of a budget disclosure⁴ are defined by statute, as are the required contents of a resale certificate.⁵ Those things which are required to have “notice” are identified in the statutes or Declaration (as in notice and opportunity to be heard, notice of the annual assessment, and notice of damage and destruction). If the required content of the notice is stated in a statute or in the Declaration, that specific content must be provided.⁶

“Notice” can also mean the process of “how” and “when” an owner must be informed of something of some importance. This process is often specified in the Declaration, and sometimes in statutes. Sometimes the word “notice” is not used, but the same required process by the Association would apply (i.e. must be “furnished” as with fine schedules, must be “mailed” as with the annual budget prior to a meeting).⁷

Beyond the definition(s) of “notice” in an Association’s Governing Documents, the New Act and the HOA Act provide specific “notice” requirements for three Association duties and actions:

1) Notice before assessing fines

Before an Association may levy a fine on an owner, the Association must notify the owner of the alleged violations and the corresponding fines. "Notice" under state law that authorizes fines includes an obligation that an Association adopt a fine schedule and communicate (publish) that schedule to the owners.^{8 9} However, statutes do not further define "notice."

An Association will probably satisfy its "notice" requirement(s) if the Association complies with the written notice requirements in its own Governing Documents, if those notice requirements are reasonable. This determination is fact specific.

2) Notice of budgets

Most Boards must provide a summary of a budget to all owners within thirty days after the Board adopts the budget. New Act Condominium Associations and HOAs must also set a date for an owners meeting to ratify the budget not less than fourteen days or more than sixty days after mailing the budget summary.^{10 11}

The manner in which the Board must notify the owners of the meeting is determined by the Association's Governing Documents, but must not be less than the minimum number of days or more than the maximum number of days required by statute.¹²

3) Notice of annual meetings and special meetings

Associations must hold a meeting at least once each year.¹³ For New Act condominium Associations, the Board must give owners at least ten days' notice (but not more than sixty days' advance notice) of the meeting.¹⁴ The notice must be delivered to the owners by either:

- (1) Hand-delivery to the owner's mailing address; or
- (2) Prepaid first-class US mail to the owner's mailing address.¹⁵

For homeowner Associations, the Board must give owners at least fourteen days' notice (but not more than sixty day's advance notice) of the meeting. The notice must be delivered to the owners by either:

- (3) Hand-delivery to the owner's mailing address;
- (4) Prepaid first-class US mail to the owner's mailing address; or
- (5) Electronic transmission to an address location, or system designated in writing by the owner.¹⁶

The notice for any New Act condominium or HOA meeting must state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer.¹⁷

Even if a Board complies with the Association's notice requirements, as provided in its Governing Documents, failure to comply with the notice requirements provided by the statute(s) in the above three situations may result in an invalidation of the action.

"Notice" is intended to inform owners and provide them time to respond to or participate in Association activities. Notice is also intended to inform owners about rights and obligations as they change. Notice must be reasonable and be expected to reach the owners.

¹ A search of one 2011 Condominium Declaration had the word "notice" appear over 70 times.

² *Rekhter v. Dep't of Soc. & Health Servs.*, 180 Wn.2d 102 (2014) (all contracts contain an implied duty of good faith and fair dealing).

³ RCW 64.34.090 (Obligation of good faith) “Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.”

⁴ See RCW 64.34.308(4) (*Board of directors and officers*); RCW 64.38.025(4) (*Board of directors — Standard of care — Restrictions — Budget — Removal from Board*).

⁵ See RCW 64.34.425 (*Resale of unit*).

⁶ Fine schedules must contain a list of the fines that can be assessed against an owner. Budgets must contain specific information about reserves. Often Governing Documents will contain specifics about violation letters. Liens require specific information about the property and the amount owed.

⁷ In this example, if the Governing Documents provide that (1) “notice is deemed ‘delivered’ three days after the notice is sent” and (2) “notice for a meeting must be ‘delivered’ to owners at least ten days before the meeting,” then the notice must be sent (mailed) thirteen days in advance so it will be “delivered” at least ten days before the date of the meeting.

⁸ **RCW 64.34.304(k) (Unit owners' Association — Powers) provides:**

. . . [An Association may] . . . , after notice and an opportunity to be heard by the Board of directors or [a representative of the Board of directors,] . . . levy reasonable fines in accordance with a previously established schedule adopted by the Board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the Association . . .

⁹ **RCW 64.34.304(k) (Unit owners' Association — Powers) provides:**

. . . [An Association may] . . . , after notice and an opportunity to be heard by the Board of directors or [a representative of the Board of directors,] . . . levy reasonable fines in accordance with a previously established schedule adopted by the Board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the Association . . .

¹⁰ RCW 64.34.308(3) (Board of directors and officers) provides:

Within thirty days after adoption of any proposed budget for the condominium, the Board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary.

¹¹ *RCW 64.38.025(3) (Board of directors — Standard of care — Restrictions — Budget — Removal from Board) provides:*

Within thirty days after adoption by the Board of directors of any proposed regular or special budget of the Association, the Board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary.

¹² If a Board fails to comply with the notice requirements in the Association's Governing Documents, then the budget that was last ratified by the owners will continue to be the budget until a new budget is ratified by the owners. RCW 64.34.308(3); RCW 64.38.025(3).

¹³ *Special meetings may be called by the president, a majority of the Board, or by voting owners who have 10% of the total votes (for homeowner Associations) or by voting owners who have 20% of the total votes or any lower percentage specified in the declaration or bylaws (for condominium Associations). RCW 64.38.035(1); RCW 64.34.332.*

¹⁴ *RCW 64.34.332 (Meetings) provides:*

. . . the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner.

¹⁵ *RCW 64.34.332 (Meetings).*

¹⁶ *See RCW 64.38.035(2) (Association meetings — Notice — Board of directors).*

¹⁷ *RCW 64.38.035(3); RCW 64.34.332.*