

17--What Is the Board's Authority to Adopt Rules and Assess Fines?

The Declaration, Bylaws, and relevant Statutes grant Associations regulatory powers and define the breadth and limits of those powers. With some exceptions, only the Board can act on behalf of the Association. To exercise these powers, the Board must first act to implement and publish rules. Before the Board fines an Owner, it must establish a Fine Schedule, distribute it to all Owners, and provide an Owner with the opportunity to be heard.

The law grants Homeowners' and Condominium Associations the power to pass rules necessary and proper for the governance and operation of the Association.¹ The Governing Documents serve as the primary limitation on the Association's rule making power.² A limitation on the Association's rule making power may be express or inferred from the Governing Documents.³ The courts will require that any rule must be reasonable in purpose and in application.⁴ A rule will be reasonable if it promotes the health, happiness and peace of mind of the Unit Owners, and is not selectively enforced.⁵

Generally, only the Board can act on behalf of the Association. However, the Board may not amend the Declaration or pass rules that conflict with the Declaration. To undertake such actions, a Declaration amendment must be approved by the Owners. Statutes and the Declaration outline the amendment process.

To implement a rule, the Board must first engage in a rule making process. The Declaration and Bylaws may establish the Board's rule making procedures, but most are silent, as are the statutes. WUCIOA contains specific procedures for rule making which must be followed unless the Declaration provides otherwise.⁶ Under WUCIOA, the Board must provide the Owners notice of its intent

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to pass, remove or otherwise modify a rule, and it must give the Owners the opportunity to comment before adopting the change.

The Board must actually pass a rule before it can take effect. Communities run into trouble where the Governing Documents direct the Board to regulate certain areas, but the Board never passes any rules addressing them. For example, the Governing Documents may indicate that pets may be kept only as provided in rules established by the Board. This provision was likely passed to limit the size, type, and breed of pets that the Owners may keep. But, the community cannot enforce any limitations until the Board defines them in a rule. In another example, an HOA adopts an amendment allowing the Board to set standards for replacement of hot water heaters, but the Board never sets a standard. The Board then wants a homeowner to replace his water heater. Unfortunately, because the Board never adopted standards for water heater replacement, it does not have any authority to require the Owner to replace the heater.

Prior Board action is particularly important when the community seeks to enforce its rules through the use of fines. Under Washington law, Homeowners' Associations and Condominium Associations cannot collect fines unless the Board of Directors has established a Fine Schedule.⁷ Because the statutes give the Board the authority to make rules and assess fines, a Board may do so, even if the Declaration is silent. The Board does not need to pass a specific rule to enforce a provision of the Governing Documents. As an example, the Board does not need to pass a rule in order to enforce the "noxious and offensive behavior" provisions in the Declaration. However, fines still may not be assessed unless the Board has established and distributed a Fine Schedule.

Washington law requires that the Board provide an Owner with "notice and an opportunity to be heard" before they may be fined. Washington courts have not addressed what these statutes

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specifically require, but other states have examined similar statutes. Indiana requires that Associations strictly comply with the notice requirements in their Declaration. "We decline to hold the requirement [of the declaration] to wait ten days after giving notice was a 'nonessential condition'...if [the association] wished to impose the sanctions, it was obliged to follow the process outlined in the covenants..."⁸ Florida courts also enforce strict compliance with notice requirements, stating "that strict compliance with the notice provision of the statute was a necessary prerequisite for HOA to impose fines" while holding that 13 days' notice was insufficient when the statute called for 14 days.⁹

Connecticut courts determined that opportunity to be heard requires that the Association provide the Owner with a hearing. Finding that "the trial court, having heard evidence that the defendant was not afforded a hearing before the plaintiff imposed fines against him, improperly concluded that the fines 'were validly assessed.'"¹⁰ The Owner's failure to attend the hearing does not prevent the Board from issuing the fine.

The statute says an Owner must have an opportunity to be heard. Some Declarations, like in *Congress Street*, require an actual hearing be scheduled and held, whether the Owner requests it or not, and whether the Owner attends or not. We recommend that any violation notice offer an Owner the opportunity to be heard before the Board or its agent, and every fine be applied with a delay, and an offer to the Owner for a hearing. It is usually not enough to fine and offer an appeal process.

¹ RCW 64.34.304(1) ("...the association may: adopt and amend bylaws, rules, and regulations...exercise any other powers conferred by the declaration or bylaws...exercise all other powers that may be exercised in this state by the same type of corporation as the association; and exercise any other powers necessary and proper for the governance and operation of the association...")

RCW 64.38.020(1) ("...an association may: adopt and amend bylaws, rules, and regulations...exercise any other powers conferred by the

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bylaws...exercise all other powers that may be exercised in this state by the same type of corporation as the association; and exercise any other powers necessary and proper for the governance and operation of the association.”)

RCW 64.90.405(2). (“...the association may: amend organizational documents and adopt and amend rules...exercise any other powers conferred by the declaration or organizational documents; exercise all other powers that may be exercised in this state by the same type of entity as the association; exercise any other powers necessary and proper for the governance and operation of the association...”)

² *Hardy v. Fairwood Greens Homeowners' Ass'n, Inc.* 120 Wash.App. 1040, at *3 (Wash. App. Ct. 2004). (“The major requirement in adopting such rules and regulations is that they must not be inconsistent with the governing documents.”)

³ *Id.* at *4. (Declaration provision permitting the regulation of vehicles over 6,000 pounds implied that the association did not have the power to regulate vehicles under 6,000 pounds.)

⁴ *Kawawakis v. Academy Square Condominium Association*, 176 Wash.App. 1038 at *5 (2013). (“We must first consider whether the house rule here...is reasonable in purpose and then we must determine whether it is reasonable in application.”)

⁵ *Id.* (“A house rule has a reasonable purpose when it is one that is reasonably related to the promotion of the health, happiness, and peace of mind of the unit owners...To be reasonable in application, a house rule must not be selectively enforce.”) (Internal Quotation Omitted)

⁶ RCW 64.90.505

- (1) Unless the declaration provides otherwise, the board must, before adopting, amending, or repealing any rule, give all unit owners notice of:
 - (a) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and
 - (b) A date on which the board will act on the proposed rule or amendment after considering comments from unit owners.
- (2) Following adoption, amendment, or repeal of a rule, the association must give notice to the unit owners of its action and provide a copy of any new or revised rule.
- (3) If the declaration so provides, an association may adopt rules to establish and enforce construction and design criteria and aesthetic

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standards and, if so, must adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

- (4) An association's internal business operating procedures need not be adopted as rules.
- (5) Every rule must be reasonable.

⁷ RCW 64.34.304(1)(k). ("Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable 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...")

RCW 64.38.020(11). ("Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by 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...")

RCW 64.90.405(2)(l). (...the association may...enforce the governing documents and, after notice and opportunity to be heard, impose and collect reasonable fines for violations of the governing documents in accordance with previously established schedule of fines adopted by the board of directors and furnished to owners...")

⁸ *Bixeman v. hunter's Run Homeowners Association*, 36 N.E.3d 1074, 1078 (Ind. Ct. App. 2015).

⁹ *Dwork v. Executive Estates of Boynton Beach Homeowners Association, Inc.*, 219 So.3d 858, 859 (Fla. 4th DCA 2017).

¹⁰ *Congress Street Condominium Association, Inc. v. Anderson, et al.*, 156 Conn.App. 117, 123-24 (Conn. App. Ct. 2015).