

19--Must the Board Resolve Neighbor Disputes?

The Board is not required to intervene in disputes between neighbors. Most Declarations provide individual Owners with the power to bring a suit against their neighbor directly to enforce community rules. Entering into the dispute on behalf of one Owner generally does not benefit the community, sets a bad precedent and can result in costly litigation. Sometimes the Board must determine if the Governing Documents have been violated, but it need not be involved further. If the Board wants to help resolve a dispute, they could help Owners mediate or negotiate a resolution.

The Board is not required to intervene in a dispute between Owners, and generally we advise against intervention. Even if your documents provide the Board with the power to resolve the dispute, this reservation of power will generally not require the Board to act. For example, many Declarations will provide that the Association has the right to enter onto an Owner's property to repair, maintain and restore the conditions. If an Owner is not trimming the trees on his property, this grant of authority would permit the Association to enter the property, trim the trees and then assess the costs to the Owner. However, it does not obligate the Board to exercise this power, and a neighbor may not use this provision to force the Association to act. The Board has every right to not act.

We generally advise that the Board allow Owners to resolve disputes on their own. Board intervention may escalate the situation and drag the community into costly and time-consuming litigation. Returning to the above, example, if the Board chose to enter onto the Owner's property to trim the trees, the Owner could refuse to allow the Association access or refuse to pay the

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assessment. The Board would then need to initiate a lawsuit to enforce the Board's decision. This lawsuit could cost the Association thousands of dollars. Therefore, the best course of action may be to let the Owners resolve the issue themselves. There is usually little cost to the community taking a wait-and-see approach, and the community may still intervene to enforce the community rules at a later date.

A Board may want to be more proactive. All Associations have the authority to issue fines for violations of the Governing Documents.¹ However, before a fine can be issued, a Fine Schedule must have been distributed to the Owners, and the Board must offer a hearing to the offending Owner. Of course, the Owner may dispute the fines and force the Association to bring a collections action, or they may choose to pay the fines rather than correct the issue.

Rather than escalate a neighbor dispute through Board enforcement, the Board may want to take action to assist the Owners' efforts to resolve the issue on their own. First, the Board should send a letter to the Owners indicating if there is an actual violation of the Governing Documents. This letter may help resolve a dispute as to whether a violation even exists, and it will provide a basis to move towards a resolution of the conflict. The Board may also serve as a mediator to facilitate in-person communication. Board mediation will not cost the Association any money and it may help build a sense of community. The Board may use its role as a mediator to highlight the importance of the Owners satisfying their obligations and working together to achieve their shared vision for the community. Sometimes it is easier for Owners to recognize the need to comply with the community rules when they are face-to-face with the Board and their neighbors, and not alone at home responding to less personal communications.

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The Board can also suggest third party mediation to assist the neighbors. Many counties have Dispute Resolution Centers which offer free or low-cost mediation. The local Law schools both have free mediation clinics. There are multiple professional mediation and arbitration companies that can assist.

¹ RCW 64.32.060. ("Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration or in the deed to his or her apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner.")

RCW 64.34.304(1)(k). ("...the association may...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). ("...an association may...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 a previously established schedule of fines adopted by the board of directors and furnished to the owners...")