**$99.00**



**HOA Policies**

**17 Sample Policies Every HomeolNners Association**

**Board of Directors Should Consider**

*An Exclusive Special Report from HOAleader.* com

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**Assessinent Collection Policies**

"In California, some policies are required by law," says David C. Swedelson , principal at Swedelson & Gottlieb, a law firm that represents associations in the Los Angeles area. "Associations are required to have a collections policy, or they can't collect assessments. The board is also required to provide owners with a copy of the

associat ion 's collection policy."

Even if you're not required by your state law to have a collections policy, it's critical to have one. "Every community should have a collection policy and adhere to it like a rock," says Bob Tanke!, principal at Robert L. Tanke! PA in Dunedin, Fla., a law firm that specializes in advising associations. "With the economy so terrible, a collection policy is the very best policy to have now."

What should you know when creating your collections policy? Here are a few tips from Matt Zifr ony, who advises homeowners and condo associations at Tripp Scott, a Ft. Lauderdale law firm, and who's also the president of a 3,000-home association.

1. Make sure your collection policy is uniformly and consistently applied. Providing an exception to a unit owner could lead to claims of selective enforcement.
2. Current economic conditions have forced many associations to become a lot more aggressive with their debt collection policies. In many instances, the timeline as to when a delinquent account is sent to legal counsel has been shortened, and the willingness of the association to work out a prolonged repayment plan has gone away .
3. Many associations now take into consideration in their debt collection policy the possibility and likelihood that they will ultimately take title to a home via foreclosure pending the mortgage holder concluding its own foreclosure. The association would then lease out the home and collect rents from a tenant while the mortgage holder's foreclosure is progressing. In other words, many debt collection policies now anticipate the association taking on the role of a landlord.
4. Many associations are bringing in receivers to collect rent from tenants who are living in homes in which the owner is behind on maintenance payments.

With those tips in mind, consider these two sample collection polices.

**Sample 1: Late Fees and Collection Policy**

(Courtesy of Nancy T. Pol omis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn.)

**Late Fees and Collection Policy**

Effective \_

The following policy relates to the method by which the association will pursue past due accounts, assess late fees and enter into payment plans.

1. Association Dues-Monthly installments ("dues") of annual assessments are due and payable on the first (1st) day of each month.
2. Late Fees-If full payment of monthly dues is not received by the fifteenth (15th) day of the month, then a late fee of $25.00 will be assessed. Late fees are due and payable as soon as they are incurred. Late fees will apply to the month of the late dues payment only. There shall be no late fees assessed on late fee balances only. However, partial payments of monthly dues shall be considered late under this policy and a late fee shall be assessed on the fifteenth (15th ) day of the month unless the monthly dues are paid in full within the fifteen (15) day deadline.
3. Late Notices-The association, at its option and within its sole discretion, may send notices to delinquent owners at sixty (60) and ninety (90) day intervals. The ninety (90) day notice may include a ten (10) day demand statement for payment in full of all outstanding dues and late fees. If payment in full is not received within the ten (10) days of such notice, the account may be turned over to the association's legal counsel and/or a lawsuit or foreclosure proceeding may be brought against the member by the association. The association, at its option, may elect to pursue the matter in conciliation or district court or may pursue foreclosure. All attorneys' fees and court costs will be assessed to the member. In the event that legal counsel is retained, the member will be responsible for all attorney and collection fees and costs incurred by the association.
4. Payment Plans-If a member is in arrears on dues owed to the association, a payment plan may be entered into with the member. However, the following rules apply to all payment plans.
   1. The management staff may approve plans for six months or less. Any and all payment plans longer than six months must be approved by the board.
   2. All payment plans must be in writing and signed by the delinquent owner.

As a general rule: When an account is turned over to legal counsel specifically for foreclosure proceedings, such action may receive the approval of the board of directors.

Sample 2: Assessment Collection Policy

(Courtesy of Penny L. Koepke , an attorney at Ekmark & Ekmark LLC in Scottsdale, Ariz.)

Adopted the day of ,20\_

**Policy Objective**

The collection of assessments pursuant to the association Declaration of

Covenants, Conditions & Restrictions ("Declaration") and this Assessment Collection Policy will be governed by the following objective:

The association will pursue collection of all assessments, late fees, and all related costs of collection, including but not limited to lien fees, collection costs, and attorneys fees. Fines will be collected in the manner as authorized by law.

**Ownership Interests**

The person who is the owner of a lot as of the date an assessment becomes due is personally liable for the payment of the assessment. The personal obligation for a delinquent assessment does not pass to the successors in title of the owner (but the association's automatic lien runs with the property). As used herein, the term "delinquent owner" refers to that person who held title to a lot on the date an assessment became due, and who has unpaid assessments and related amounts.

Unless expressly noted otherwise, the "owner" refers to an owner of a lot.

**Due Dates**

The due date for a given assessment shall be as prescribed in the applicable

assessment billing notice and is referred to in this Assessment Collection Policy as the "due date." For imposition of late fees, assessments are delinquent if not paid within 15 days (the "delinquency date"). The association reserves the right to impose interest on delinquent amounts in accordance with the terms of the declaration at Article\_, Section \_.

**Handling Charges and Returned Checks**

In order to recoup costs incurred because of the additional administrative expenses associated with collecting delinquent assessments, collection of the following fees and charges are part of the Assessment Collection Policy and as set forth in the declaration, secured by the assessment lien and the personal obligation of the delinquent owner:

1. Any handling charges, administrative fees, postage, or other collection costs or expenses incurred by the association in connection with the collection of any assessment or related amount owing beyond the delinquency date.
2. A reasonable charge, as determined by the board from time to time, will become due and payable for any check tendered to the association that is dishonored by the drawee of such check, the charge being in addition to any other fee or charge passed on by a financial institution.
3. A late charge of $15.00 on the unpaid assessment or 10% of the delinquent assessment.
4. Lien fees, if a notice of lien is prepared and/or recorded.
5. ) Attorneys' fees and costs.
6. Any fee or charge becoming due and payable pursuant to this paragraph will be added to the amount outstanding and is collectible to the same extent and in the same manner as the delinquent assessment.

**Application of Funds Received**

Unless otherwise directed in writing by the payee and unless otherwise subsequently changed by state statute, all moneys received by the association will be applied to amounts outstanding to the extent of and in the following order:

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* 1. First, to assessments;
  2. Next, to late fees and interest on those late assessments;
  3. Then to collection fees and attorneys' fees and costs the association has incurred and related to the unpaid assessments;
  4. Next, to other unpaid fees, charges and fines or interest and late charges on any of those amounts.

**Ownership Records and Notice**

All collection notices and communications will be directed to those persons shown by the association's records as being the owner of the property for which assessments are due and will be sent to the most recent address of such owner solely as reflected by the association's records. Any notice or communication so made will be valid and effective for all purposes pursuant to the declaration and this Assessment Collection Policy until such time as there is actual receipt by the association of written, or other notification acceptable to the association, of any change in the identity or status of such owner or its address or both.

Where an owner has acted so as to put the association on notice that its interest in a lot is being handled by a representative or agent for legal or communication purposes, any notice or communication from the association pursuant to this Assessment Collection Policy will be deemed full and effective for all purposes if given to such represent at ive or agent.

**Notification to Owner of Delinquency**

1. *Late Notice.* A payment by a member is deemed delinquent if it is unpaid fifteen

(15) or more days after the due date. A late notice may be sent and at the option of the association, the account may be charged a $15.00 late charge or ten percent (10%) of the past due assessment (whichever is greater) and interest pursuant to Article\_, Section \_ of the declaration.

1. *Pre-Lien Demand.* No sooner than thirty (30) days beyond the due date, the association may, but is not required to, send a demand letter to the delinquent owner making formal demand for immediate payment for all outstanding amounts ("Demand Lien Letter"). All fees and collection costs associated with the demand

lien letter will be charged to the delinquent owner's account. Fees for this letter are a cost of collection and per the terms of the Declaration, not only the personal obligation of the owner, but also secured by the assessment lien.

1. *Notice of Lien.* No sooner than sixty (60) days after the due date, where an owner has failed to pay in full the delinquency secured by the assessment lien, the

association may cause to be prepared and recorded with the County

Recorder's Office against title to the owner's property a written notice of lien ("Notice of Lien"). All assessments and charges, with the exception of fines and late charges and interest thereon, constitute a lien on the lot automatically under

the Declaration and [insert state] law. Any fees imposed for the recordation

of the notice of lien are not only the personal obligation of the owner, but also secured by the assessment lien and will be charged to the delinquent owner's account.

1. *Other Notifications.* After 90 days, the association's legal counsel may, at the direction of the board, pursue other legal remedies available to collect delinquent assessments, including, without limitation, personal judgment suits and/or an action to foreclose the assessment lien . Prior to instituting litigation related to the delinquency, the association's legal counsel will send a letter to the delinquent owner's address of record with the association. A fee can be charged to the owners account for transferring the collection file to the association's legal counsel, said

" fee not only the personal obligation of the owner, but also secured by the assessment lien and will be charged to the delinquent owner's account.

**Foreclosure Suits/Suits for Money Judgment**

Under the Declaration and [insert state] law, the association may sue a

delinquent owner personally for a money judgment and/or foreclose the assessment lien against the lot in the same manner as a mortgage. Either remedy may result in additional expense, or actions, including garnishments, debtor examinations, or sheriff sales of real or personal property.

Other Remedies [only if applicable, all governing documents are different]

Per the Association Declaration of Covenants, Conditions & Restrictions, the

association can also suspend the voting rights of the delinquent owner and/or suspend the rights of the delinquent owner to use the association's recreational facilities.

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**Policy**

The Assoc iation, through the board of directors, reserves the right and is willing to work with delinquent owners via payment plans and to consider legitimate hardships and other circumstances.

Adopted by the board of directors of association at a duly called meeting on the

day of ,20\_.

The Assessment Collection Policy is APPROVED.

Signature/Date

-----------------------Title

**Insurance Deductible Policy**

A deductible policy tells homeowners how the association will handle the deductible when there's a claim made against the association's insurance policy," explains David

* 1. Swedelson, principal at Swedelson & Gottlieb, a law firm that represents

associations in the Los Angeles area.

"I represent an association in which an owner sued after a fire damaged the interior of her unit and the association paid her everything it received from the insurer but not the $10,000 deductible. The owner sued, arguing that the fact that the association paid out on the policy meant the association was responsible to repair her unit; therefore, it should also pay her deductible. Shockingly, the small claims judge agreed. However, the association appealed, and a superior court judge said, 'The association didn't cause this damage, so it's not responsible for the deductible."'

Sample HOA Deductible Policy

(Courtesy of Davld C. Swed lso,n principal at Swedelson & Gottlieb, a law firm that

represents associations in the Los Angeles area.)

It is the association's deductible policy that if the association is responsible for the damage at issue-meaning that it occurred because of something the association did or did not do-the association will be responsible for the deductible. However, if the damage at issue occurred because of something that broke or something that homeowners did or did not do within their unit, and the association is not directly responsible, the deductible is the homeowner's responsibility.

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**Rentals: Background Check**

**Certification**

Many associations worry that if owners rent out their homes to tenants who don't care about property values in the way that owners do, property values for all homeowners will suffer.

Most states, including Colorado, Florida, and Massachusetts, currently permit associations to prohibit rentals. Depending on your state law, you could ban rentals entirely, or you can prohibit them once they reach a certain percentage-say, 25 or 30 percent-of total ownership. If you limit rentals, you'll need to create a monitoring system so that you're always aware of the current rental percentage. You'll also need to create a list indicat ing wh ich owners are on deck to be able to rent their property when your percentage drops below the limit.

Other options include passing rules that allow your board to fine owners for their tenants' violations of association rules and amending your governing documents to allow your association to evict renters for rule violations. You can also consider requiring that owners certify that they've done a background check on tenants to whom they rent. If you adopt that requirement, here's a sample form you can require owners to complete.

SAMPLE CERTIFICATION OF OWNER

(Courtesy of Nancy T. Polom is, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn.)

Owner(s) Name(s):

Property Address:

, **Unit \_**

**,MN**

Prospective Tenant Name(s): \_

I/we, the above-named Owner(s) of the above referenced unit located within

Association ("Association"), do

hereby certify to the Association, its agents and representatives, as follows:

1. I/we have undertaken to have a nationwide background check performed on each of the above named prospective tenants.
2. Such background check was performed by an independent, reputable, experienced professional.
3. The agency conducting the background check holds any and all licenses necessary to conduct such background checks as may be required by state or federal law.
4. I/we have reviewed the information contained in the background check reports(s), and there is nothing identified in those reports indicating that the prospective tenant(s) would pose a health or safety risk or pose any other type of danger to the other Owners and Occupants of the [NAME] community or their property. Specifically, there is no evidence of any of the following criminal act ivities :
   * Assault, battery or other evidence of violence against persons or property
   * Sexual assault or other criminal sexual activity
   * Stalking, harassment or similar acts
   * Robbery, burglary, murder, rape, or other violent felony against persons or property
   * Drug-related activity

I/we understand that the above-described list is not intended to be exhaustive, and the mere absence of evidence of such activity does not necessarily indicate that the prospective tenant poses no health or safety risk or other type of danger to Owners or Occupants of the Association.

I/we hereby certify the above to be true as of the date hereof.

Date: \_ Name

Date: \_ Name

**ALL OWNERS OF THE PROPERTY MUST SIGN THIS CERTIFICATION, AND ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.**

STATE OF \_

)

) ss.

COUNTY OF \_

On the

)

day of , 20\_, before me

appeared tome personally known to be the person described in and who executed the same as his/ herfree act and deed.

Notary Public

STATE OF \_ )

)

COUNTY OF \_ )

ss.

On the day of , 20\_, before me

appeared tome personally known to be the person described in and who executed the same as his/ herfree act and deed.

Notary Public

## Hardship Exception to a Ban on Rentals

In states that permit such bans-and not all states do-some condominium and homeowners associations prohibit owners from renting their units. Many owners believe absentee owners and their tenants don't maintain property in the same way that resident owners do, dragging down property values throughout the entire community. In addition, absentee owners occasionally push some of the responsibility for overseeing their property and their tenants to neighbors or the association's management company. That can generate disputes among neighbors and unfairly add to your management company's responsibilities.

Even if your owners aren't concerned about these potential problems, lenders and your insurance company are. Lenders believe an excessive number of rentals in a community harms property values, which increases their risk in making loans in those communities. So when homeowners attempt to sell a property, potential buyers may have trouble finding a lender to extend financing. In addition, some insurers won't insure homes in associations with more than 30- 35 percent rentals, or they'll charge much higher premiums for their increased risk.

For all those reasons, many associations chose to prohibit rentals. However, they also sometimes create policies to allow occasional exceptions to the ban in limited situations. Here's a sample policy outlining possible exceptions to a ban on rentals.

Sample Hardship Exception to a Ban on Rentals Policy

(Courtesy of Nancy T. Polom is, a partner at Hellmuth & Johnson PLLC in Eden Prairie,

Minn .)

Pursuant to Section\_ of the declaration for [COMMUNITY NAME], leasing of units in the [COMMUNITY NAME] is generally prohibited. There is, however, an exception where the provisions of the declaration impose a hardship upon an owner. In such case, the owner may petition the board of directors for a written waiver of the leasing restriction as to that owner's home based upon the hardship.

For purposes of this section, "hardship" includes:

1. A sit uat ion in which the owner has a prolonged illness or injury requiring the owner to live in a hospital, nursing home, or other similar assisted living facility for an extended period of time, and preventing him or her from residing in his or her [COMMUNITY NAME] home.
2. A military deployment to a location more than one hundred (100) miles from the [COMMUNITY NAME] community, which deployment will result in the absence of the owner from the [COMMUNITY NAME] community for more than seven (7) consecutive months. The board may request written proof of deployment as a condition of granting a waiver.
3. A situation in which a member of the owner's family is in need of physical ass ist ance for an extended period of time (e.g., to recover from an illness or injury), and such family member lives more than fifty (50) miles from the [COMMUNITY NAME] community. "Family member" shall be defined as an owner's spouse, brother, sister, parent, stepparent, child, stepchild, grandparent, grandchild, aunt, uncle, niece or nephew.

The board may, at its discretion, grant hardship waivers based upon other circumstances. A homeowner's choice to spend a portion of any calendar year residing in another location shall not, in and of itself, constitute a hardship.

All petitions for waiver will be evaluated on a case-by-case basis; a waiver granted in one instance shall not obligate the board to grant a waiver in a different, but similar instance.

In the event the board grants a waiver, it may impose conditions on such waiver, including, but not limited to, restrictions on the term of a lease permitted under such waivers. Upon the expiration of a lease permitted pursuant to a waiver, an owner must submit a new petition for waiver for any subsequent leasing of such owner's unit. Such petition will be reviewed by the board without regard to any prior waivers granted to the petitioning owner, provided, however, that repeated petitions for waiver by an owner may be considered as a basis for denial of such owner's petition for waiver.

# Violation and Fine Policies

In general, a fine should be reasonable and have some bearing or rational basis to the expense the association could incur," says Justin D. Par k, an attorney at Romero Park & Wiggins in Bellevue, Wash., who advises homeowners associations. "The best example is a fee for the late payment of dues. Some states say late fees aren't allowed to be penalties, but only the passing on of expenses. So if an association has to delay paying a bill because it doesn't have the funds, it could incur some expense. There doesn't have to be a perfect relationship, but generally courts want to see that the fee and the expense are in the same ballpark." In one case when Park began representing an association, he had to inform the board that its $500 fee for walking a pet without a leash probably wouldn't be enforceable.

"Whatever the fee, there has to be consistency," adds Park. "It's possible through the legal theories of waiver or abandonment for an association to lose the ability to collect a fine if it doesn't actively pursue it. Most CC&Rs have a provision that prevents that from happening, but occasionally I run across one that doesn't have that provision."

Be sure you're consistent in both assessing and enforcing fines. For example, if two owners park their cars on the street-which violates your rules-for a year, and you do nothing, don't expect to be able to enforce a fine imposed immediately on the third person who commits the same violation.

Sample Violation and Fine Policy

(courtesy of Kristen L. Rosenbeck, a partner at the Mulcahy Law Firm PC in Phoenix)

1. **Establishment of a violation.**

Any activity or condition continuing on any lot that is in direct opposition to the plat, declaration, articles of incorporation, bylaws, rules and regulations and/or guidelines (referred to as "association's governing documents"), which is not expressly authorized by the board, is deemed a " violation" under this enforcement policy for all purposes.

1. **Notice of violation.**
   1. *Initial Notice.* Upon verification of the existence of a violation by the association, or management company ("management") as agent of the association, an initial violation letter will be sent to the lot owner a written notice of the discovery of the violation ("initial notice"). The initial notice will inform the recipient as follows:
      1. The nature, description and location of the violation; and
      2. A request to remedy the violat ion; and
      3. Notice that if the violation has already been corrected or plans and specifications for a subject improvement have been submitted to the architectural review committee to disregard the notice.
   2. *Second Notice of Violation.* If the lot owner fails to remedy the violation or fails to submit plans and specifications for the offending improvement to the architectural review committee or if the architectural review committee has denied approval of the plans and specifications submitted, and the violation is continuing, no earlier than ten (10) days from the initial notice (unless specifically provided for in the association's governing documents), management shall send to the lot owner a second notice of violation informing the recipient as follows:
      1. The nature, description and location of the violation and the failure of the lot owner to correct the violation, as previously requested; and
      2. Notice that if the violation is corrected or eliminated within ten (10)

days from the delivery of the second notice of violation, no further action will be taken; and

* + 1. If necessary, work on any improvement must cease immediately and may not resume without expressed written approval of the architectural review com\_m itt ee; and
    2. Failure to remedy or cease work on any subject improvement will result in the associat i on electing to pursue any one or more of the remedies available to the association under the declaration or this enforcement policy.
  1. *Failure to Remedy.* Failure to (i) cease all work immediately upon receipt of the second notice of violation, or (ii) remedy the current violation existing upon the lot within ten (10) days of the date of the second notice

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of violation (or sooner if specifically provided), shall constitute a continuing violation and result in one or more of the following: (a) a fine being levied by the association against the lot owner, (b) correction of the offending improvement by the association at the expense of the lot owner through a benefitted assessment being levied against the lot owner, which may be recorded as a lien against the lot or (c) any other remedy under law or at equity, the declaration or this enforcement policy, including but not limited to injunctive relief. Management shall send to the lot owner a formal notice of fine informing the recipient of the continuing violation and the remedy chosen as a result thereof. The date of the notice of fine shall be the "notice of fine date."

* 1. *Fine Structure.* At the board's discretion, pursuant to the provisions of Paragraph 2, an initial fine may be imposed from $10 to $5,000 followed by fines imposed at the rate of $10 to $5,000 per occurrence, day, week or month, pursuant to the association's fine schedule.
  2. *Hearing.* Included in the notice of fine will be the opportunity for the lot owner to request and be granted a hearing by the appropriate committee or the board prior to any fine or benefitted assessment being levied upon the lot owner. The notice of fine will allow the lot owner ten (10) days to contact management, in writing, to request a hearing or issue a written dispute of the continuing violation. Should the lot owner fail to contact management within (10) days of the notice of fine date, that party will have waived its opportunity for said dispute to be heard before the board of directors. All cases that are up for fine review will be heard by the board of directors at their regularly scheduled meetings.

1. **Corrective action.**

Pursuant to allowances granted by the declaration, where a violation is determined to exist and referred to the board of directors of the association, pursuant to any provision of this enforcement policy, management, with the approval of the majority of the board of directors of the association, may undertake to cause the violation to be corrected, removed or otherwise abated by qualified contractors if management, in its reasonable judgment, determines the violation may be readily corrected, removed or abated without undue expense and without breach of peace. Where management decides to initiate any action by qualified contractors, the following will apply:

* 1. Management must give the lot owner and any third party directly affected by the proposed action prior written notice of undertaking of the action. The foregoing notice may be given at any time.
  2. Cost incurred in correcting or eliminating the violation will be referred to the association to be recovered from the lot owner as an assessment as set forth in the declaration.
  3. The association, and its agents and contractors, will not be liable to the lot owner or any third party for any damage or costs alleged to arise by virtue of action taken under this Paragraph 3 where the association and its agents have acted reasonably and in conformity with this enforcement policy.

1. **Referral to legal counsel.**

Where a violation is determined to exist and is referred to the board of directors of the association pursuant to any of the provisi ons of this enforcement policy and where management deems it to be in the best interests of the association, the Board may, at any time during the enforcement process, refer the violation to legal counsel for action seeking injunctive relief against the lot owner to correct or otherwise abate the violation, or to pursue any other legal or equitable remedy that may be available to the association.

1. **Notices.**
   1. Any notice required by this enforcement policy to be given, sent, delivered or received in writing will be deemed to have been given, sent, delivered or received, as the case may be, the earlier to occur of the following:
      1. When the notice is hand-delivered or posted at the property.
      2. When the notice is placed into the care and custody of the United States Postal Service, the notice is deemed delivered as of the date the notice is deposited into a receptacle of the United States Postal Service with postage prepaid and addressed to the most recent address of the recipient according to the records of the association.
   2. Where the interests of an owner in a lot have been handled by a representative or agent of such owner or where owner has otherwise acted so as to put the association on notice that its interests in a lot has been and is being handled by a representative or agent, any notice or communication from the association or management pursuant to this enforcement policy will

be deemed full and effective for all purposes if given to such representative or agent.

1. **Cure of violation during enforcement.**

A lot owner may correct or eliminate a violation at any time dur ing the pendency of any procedure prescribed by this enforcement policy. Upon verification by management that the violation has been corrected or eliminated, the violation will be deemed no longer to exist and the notice of violation voided. The lot owner will remain liable for all costs, fines and attorney fees and costs under this enforcement policy, which said amounts, if not paid upon demand thereof by management, will be referred to the association for collection as an assessment pursuant to the Declaration.

If a violation should reoccur during a six (6) month period, the violation shall continue on the violation process where the last notice was given.

Fine Policy

When an owner (inclu ding any family member, resident, occupant, visitor, guest, gent , licensee or tenant of the owner) violates the provisions set forth in the

dSSociation's governing documents (i.e., plat map, CC&Rs, articles of incorporation, bylaws and/or rules and regulations), there shall be grounds for assessment of a monetary penalty/fines and the violating owner shall be deemed responsible for such violation(s) and the fine assessed.

If the violation continues past default, a fine or penalty may be assessed against the owner and will be made due and payable if the violation continues to exist. The penalty shall be considered a personal liability of the owner. The following schedule is the time frame an owner has to cure his/her/their/its violation before the association may reassess the status of the violation:

* 1. *Scheduled Time for Correction*

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| --- | --- | --- |
| **VIOLATION** | **TIME TO CURE BEFORE VIOLATION IS REASSESSED** | **FINE AMOUNT** |
| Initial notice of violation | Ten (10) days\* | Courtesy - No fine\* |
| Second notice of violation | Ten (10) days\* | $20.00\* |
| Third notice of violation | Ten (10) days\* | $50.00\* |
| Fourth and subsequent notice of violation, which may be  assessed without further notice until the violation is cured | Ten (10) days\* | $100.00\* |
| * association, through its board of directors, reserves its right to alter time line and fine amount under circumstances that it determines are just in the board's sole discretion. * The association reserves its right to refer any violation to its legal counsel at any time. | | |

*Collection:* Fines and penalties that are levied as stated above may be assessed against an owner and may become due and payable within 30 days after the fine is assessed after providing the owner with notice and an opportunity to be heard. Failure to pay the fines and penalties may result in the following collection procedure:

1. Interest accruing on the total balance owed at the rate of ten (10%) percent per annum;
2. After the initial 30 days, a demand letter sent to the owner via U.S. Mail or personally delivery to the owner. The owner will be provided 10 days in which to respond. The owner will be charged for the cost of this letter. If the owner fails to bring his balance current within the 10 days prescribed in the demand letter, the association may place the owner in collections and the association may proceed with the legal remedies available to it.

The owner will lose all voting rights until the balance is paid in full. Any and all costs associated with the collection of the past due fines and penalties, costs, attorney's fees and other charges will be assessed against the owner's lot. Legal counsel may initiate action seeking injunctive relief against the lot owner to correct or otherwise abate the violation, or to pursue any other legal or equitable remedy that may be available to the association, including, but not limited to the collection of the past due fines assessed and other charges and attorney fees incurred.

Enforcement and Due Process Policy and Procedures

(Courtesy of Elizabeth Wh ite, a shareholder and head of the community associations

practice at LeClairRyan in Williamsburg, Va.)

1. Introduction
   1. Authority. Section of the [insert state name and applicable statute]

(the "act") provides that the board of directors of the association shall have the power to establish, adopt, and enforce rules and regulations with respect to the common areas and other areas of responsibility by the declaration [insert appropriate language from state statute]. The declaration of the association sets forth certain covenants. The authority to enact the enforcement and due process policy and procedures is derived from the above-referenced documents and statute.

* 1. Governing documents. The enforcement and due process policy and procedures shall be considered with the enforcement provisions of the declaration, the articles of incorporation of , thebylaws of

, and the guidelines, resolutions, rules, regulations or policies

of (the foregoing documents are herein collectively the "governing

document s") .

* 1. Definitions. Unless otherwise indicated, defined terms used herein shall have the meaning set forth in the governing documents.

1. Enforcement and due process procedures
   1. Procedures for violations of the governing documents.
      1. Noncompliance with the governing documents may be noted by any

resident, owner, employee of , member of the department, or by a city/county employee acting in an official

police

capacity by initially submitting a written notice to staff. The

notice shall specify the time, date, place, and nature of the violation.

Forms for reporting alleged violations are available at the \_ office.

* + 1. Upon receipt of such a notice, a staff member shall

investigate the alleged violation. If a violation is substantiated, the staff member shall attempt to secure compliance by sending a written first notice to the owner stating the time, date, place, and nature of the violat ion . The notice will provide a time period for compliance, will enclose a copy of this policy, and will enclose copies of applicable section(s) of the governing documents that govern such violation.

If the violation is not corrected within the time period given,

the staff member will send a written second notice of violation

again stating the date and place the violation was noted and that such violation may result in imposition of sanctions, charges, and/or legal action after notice and hearing by the board if the violation is not rectified within the second stated time period.

A record of this action and a copy of all notices sent by the

board of staff member and any correspondence relating

thereto shall be kept in the association files and may be sent to the association's legal counsel.

* + 1. If an own r fails to comply with the first and second notice, the staff

member 1hall send to the owner by registered mail a notice of hearing before the board of directors. Before any disciplinary action

is taken against any such resident or owner, the resident or owner shall have the opportunity to be heard and represented by counsel before the board.

Notice of hearing shall be hand-delivered or mailed by certified mail, return receipt requested to the owner and, if applicable, to the

resident at the address( es) of record with association at least

fourteen (14) days prior to the hearing. The notice shall specify the date, time, and location of the hearing.

The notice shall additionally identify the specific provisions of the governing documents the owner or resident is alleged to have violated or to be in violation of, shall contain allegations of fact sufficient to support a finding of such violations, and shall, to the extent possible, specify the times, dates, places, and persons involved and shall submit in writing the information listed above

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along with a description of the attempts already used to resolve the

violation.

* + 1. If, after the hearing, the board determines that a violation of the governing documents has occurred, the board shall have the power to assess charges against any owner for any violation for which the owner or the owner's family members, tenants, guests, or other invitees are responsible.
  1. Violation charges.
     1. The amount of any charges assessed by the board shall be up to fifty dollars ($50.00) for a single offense or ten dollars ($10.00) per day for any offense of a continuing nature.
     2. If the board finds that the same violation is recurring within a six (6) month time period but is not present on a daily basis, the violation(s) will be deemed to be an offense of a continuing nature and will accrue charges of ten dollars ($10.00) per day for each day the violation is noted on the property during a specific period of time (e.g., six months).
     3. The amount of any charges so assessed shall not be limited to the

expense or damage to caused by the violat ion, nor shall the

amount of such charges be deemed to reimburse whole or part for any damages or costs incur red by

either in as a

result of such violat ion or any enforcement action taken by or on

behalf of \_

* + 1. Any charges so assessed shall be treated as a special assessment

against the owner's lot and, as such, shall entitle to file a

memorandum of lien against the title to the owner's lot. Once

recorded in the clerk's off ice of the circuit court for County,

the lien shall be perfected and shall have the priority specified in

Section of the [ insert state st at ut e] . In connection with the

filing of the memorandum of lien, may notify any mortgage

company or lender who holds a mortgage or deed of trust secured by the owner's lot of the filing of such lien. Owners are cautioned that the filing of such lien may trigger a default under any mortgage or deed of trust secured by the lot .

* 1. No election of remedies. The assessment of charges and/or the filing of a memorandum of lien shall not constitute an election of remedies by

. Such charges and lien shall be in addition to any other remedy

available to in law or in equity or contractually pursuant to the

governing documents.

*I*

**Architectural Control Policy**

"Typically, an architectural committee's responsibilit y comes from the association's bylaws or CC&Rs , " says Sharon Glenn Pra tt , an attorney who advises homeowners associations and the principal at Pratt & Associates in Campbell, Calif. "Its members are responsible for maintaining the aesthetic and structural integrity of the association and enforcing the CC&Rs. They should be reviewing any applications for modifications, additions, or architectural changes in the community."

Why not just leave those decisions to homeowners? "The board has a fiduciary duty to do what's best for the whole association, not just one member who thinks his unit would be much more valuable if he made certain changes" explains Pratt. "What if those changes affect the rest of the association? You can't have people adding to their homes and possibly violating your CC&Rs or changing the actual structure of a condo without getting the association's approval."

Depending on the size of the association, the board itself may handle the duties of the architectural com mit t ee, or a separate group of members may operate as a committee. Typically, the committee reviews architectural issues in the community and ma es recommendations to the board, which makes final decisions on those issues. But Pratt has also seen architectural committees that operate independent ly of the board.

Whether you have a separate committee or your board handles architectural and aesthetic issues, be sure to check whether your state has rules governing architectural and aesthetic review within associations. Whatever your state law, it invariably requires that you have a formal process for determ ining what changes need to be approved and a process for handling applications for changes.

Sample Architectural Control Policy

(Courtesy of Bob Tanke!, principal at Robert L. Tanke! PA in Dunedin, Fla.)

Asso ciati on Inc.'s Resolutions Regarding Architectural Control Standards

WHEREAS, the Association Inc.'s (the "Association") Articles of

Incorporation authorize the association to adopt reasonable resolutions from time to time that are consistent with the rights and duties established by the Declaration of

Covenants, XXXXX of XXXXXXXX filed in Official Records Book

, Page

of the

Public Records of "Declar ation") ; and

County, [insert state name], as amended from time to time (the

WHEREAS, Article of the declaration provides the association with authority

to establish reasonable rules and regulations regarding architectural control of all improvements built on the property that is subject to the declaration, which includes individual homeowner lots as well as common areas; and

WHEREAS, the community was developed with the intent that homes and

other improvements present a pleasing, harmonious, and consist ent design and style; and

WHEREAS, in response to recent legislative changes, in particular section ,

[insert state name] statutes, effective as of , 20\_, theassociation is in the

process of adopting detailed guidelines and standards govern ing architectural control; and

WHEREAS, the association desires to preserve the existing harmonious

architectural design and style of the homes in and to prevent the introduction of

design and style that are not in keeping with the existing homes in the community.

NOW, THEREFORE, BE IT:

RESOLVED, that the board of directors recognizes and adopts the design and style of the existing, as-built (and properly approved as otherwise required by the declaration and articles of incorporation) improvements as the standard by which the

architectural committee of shall review, approve, and control the design of any

and all improvements constructed upon the property; and

RESOLVED, that the standard described above shall continue in effect until the association adopts and publishes new guidelines and standards; and

RESOLVED, that each owner shall be permitted to use any of the architectural styles, setbacks, colors and color combinations, materials, roof pitches, and doors and

windows that are already in use within the community for comparable lot

types. If the owner's property is located in a neighborhood of distinctive character and st yle, such owner's choices as to the foregoing shall be limited to those in the surrounding neighborhood.

IN WITNESS WHEREOF, the Board of Directors of Association Inc. has

adopted the foregoing resolutions upon motion made by \_

and seconded by and passing with a vote of in

favor and

opposed .. on this

day of

, 20\_, at a duly called and

properly noticed meeting of the board of directors at which a quorum was present.

------------ Association Inc.

By ­

Its: President

By:----------------

Its: Secretary

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**Standards and Procedures for Coininittees**

Most association governing documents permit the creation of committees to advise the board, or at least they don't expressly prohibit their creation. Be sure to check your governing documents before creating any committees.

Typically, committees are assigned to address a specific issue and make recommendations to the board, not make decisions themselves. For instance, if your association is considering replacing the building's roof, but your board members are tied up handling other, weighty issues, consider creating a committee to identify contractors, solicit bids, and make recommendations to the board.

Any time your board establishes a committee, it should provide oversight. You'll need a recommended plan of action to guide committee members. In that plan, include a suggested meeting schedule, outline the role of the committee chair and its members, identify the committee's tasks and responsibilities, provide goals, and establish a means-such as minutes-for regular reporting to the board. In your plan, be sure to clearly state that committee members are prohibited from obligating the association to anything-either a written contract or an informal, oral contract­ without prior approval from the board.

Also advise committee members that you want to hear all sides of the issue they're studying. So if they disagree on any aspect of their assignment, you'd like them to note-in a professional manner-that disagreement when they make recommendations. That way, you'll have the benefit of multiple viewpoints on the difficult challenges facing your association. Advise them that if an internal dispute prevents them from moving forward, they should notify the board immediately so the board can take the necessary action to get the committee back on track. That may mean having a board member sit in on meetings. It could also require the removal of an obstructionist member.

Here's a sample committee policy to provide guidance to committee members.

### Docu1nent Retention Policy

For several reasons, your association must have good recordkeeping procedures. Your members are entitled access to association records when they make a request, and you can 't fulfi ll those requests if you haven't properly retained association records. In addit ion, if you land in litigation, you'll want to be su re you've retained all the records that will prove your association acted properly (and you may even benefit from the lack of records if they've been discar ded as part of routine document destruction).

Work with an attorney to determine your state law governing association recordkeeping requirements and document retention policies. Using that research, you and your attorney can tailor the following sample policy to create a guide for retaining and destroying documents properly at your association.

###### Document Retention Policy

(courtesy of Nancy T. Polom is, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn.)

The corporate records of [ASSOCIATION NAME] and any subsidiaries (hereafter the "association") are important assets. Corporate records include essentially all records you produce as an employee, whether paper or electronic. A record may be as obvious as a memorandum, an e-mail, a contract or a case study, or something not as

obvious , such as a computerized desk calendar, an appointment book or an expense record.

The law requires the association to maintain certain types of corporate records, usually for a specified period of time. Failure to retain those records for those minimum periods could subject you and the association to penalties and fines, cause the loss of right s, obstruct justice, spoil potent ial evidence in a lawsuit, place the association in contempt of court, or seriously disadvantage the association in litigation.

The association expect all employees to fully comply with any published records retention or destruction policies and schedules, provided that all employees should note the following general exception to any stated destruction schedule: If you believe, or the association informs you, that association records are relevant to litigation, or potential litigation *(i.e.,* a dispute that could result in litigation), then you must preserve those records until the association's legal counsel determines the records are no longer needed. That exception supersedes any previously or subsequently established destruction schedule for those records. If you believe that

Standards and Procedures for All Committees and Committee Members

(courtesy of Elizabeth Whit e, a shareholder and head of the community associations practice at LeClairRyan in Williamsburg, Va.)

1. Committees shall comply with the open meeting requirements set forth in the

Condominium Act§ \_

1. Committees shall meet regularly.
2. Committee members shall regularly attend committee meetings.
3. Committee members serve for terms at the discretion of the board of directors.
4. At least one committee representative shall attend each regularly scheduled board of directors meeting and present the committee report.
5. Committees shall complete and submit written reports using the form approved by the board of directors no later than the deadline established by the board of directors for inclusion in board meeting packages.

final contracts for at least six (6) years beyond the life of the agreement, and longer in the case of publicly filed contracts.

* 1. Electronic Mail. E-mail that needs to be saved should be either:
     1. printed in hard copy and kept in the appropriate file; or
     2. downloaded to a computer file and kept electronically or on disk as a separate file.

The retention period depends upon the subject matter of the e-mail, as covered elsewhere in this policy.

Failure to comply with this document retention policy may result in punitive action against the employee, including suspension or termination. Questions about this policy should be referred to the association's general manager , who is in charge of administering, enforcing and updating this policy.

After the applicable time period provided herein, any pertinent documents may be destroyed.

READ, UNDERSTOOD, AND AGREED:

Employee's Signature

Date



exception may apply, or have any question regarding the possible applicability of that exception, please contact the corporation's attorney or a board member.

*I* From time to time the association establishes retention or destruction policies or schedules for specific categories of records in order to ensure legal compliance, and

also to accomplish other objectives, such as preserving intellectual property and cost management. Several categories of documents that bear special consideration are identified below. While minimum retention periods are suggested, the retention of the documents identified below and of documents not included in the identified categories should be determined primarily by the application of the general guidelines affecting document retention identified above, as well as any other pertinent factors.

1. Tax Records. Tax records include, but may not be limited to, documents concerning payroll, expenses, proof of deductions, business costs, accounting procedures, and other documents concerning the Association's revenues. Tax records should be retained for at least six (6) years from the date of filing the applicable return.
2. Employment Records/ Personnel Records. State and federal statutes require the association to keep certain recruitment, employment and personnel inform ation . The association should also keep personnel files that reflect performance reviews and any complaints brought against the association or individual employees under applicable state and federal statutes. The association should also keep all final memoranda and correspondence reflecting performance reviews and actions taken by or against personnel in the employee's personnel file. Employment and personnel records should be retained for six (6) years. Records for current employees shall be maintained as long as the employee continues to be employed by the association.

( c) Board and Board Committee Materials. Meeting minutes should be retained in the Association's minute book. A clean copy of all board and board committee materials and minutes should be kept for no less than six (6) years by the association.

1. Legal Files. Legal counsel should be consulted to determine the retention period of particular documents, but legal documents should general ly be maintained for a period of six (6) years.
2. Contracts. Final, execution copies of all contracts entered into by the association should be retained. The association should retain copies of the

I **Model Code of Conduct for Board**

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If you don't think that a sim ple list of guidelines would help your board, think again. "The general consensus is that a model code is a good idea, and we find them really helpful," says Elizabeth White, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "For a lot of board members, when they vote to approve a code of conduct, it makes them stop and think. But it also gives the rest of the board and management something to point to when a board member starts straying outside the appro priat e lane. It gives them something objective to evaluate behavior against. It also prevents board members from saying, 'I didn't know that was inappropriate. I didn't know accepting a Christmas gift from my landscaper, who also happens to be the association 's landscaper, wasn't proper." '

That's why we've asked our experts for their best advice on the conduct that board members should always follow, along with conduct boards should avoid. Here's that list.

1. **Commit your time.**

If you agree to be a board member, make your service a priority. Expect to attend as many meetings as you can, and attend almost all of them.

1. **Know your rules, your budget, and your building.**

Read, reread, and be well versed in your governing documents and prior minutes. Those documents are your foundation. Read ali relevant materials before meetings so you're prepared to discuss issues and make sound decisions. Be very well versed in your association's budgetary requirements and restraints. Know such things as what it costs to heat the building and employ each doorman or security guard. Become an expert in your building and grounds. Know your building physically. Know what it

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| **Eniail Policy**  ."he increased use of email as a form of communication by and among board members and property managers is ample reason for an association to create an email policy. "We're careful to inform our association clients that while email communications among board members are permitted, they can't take the place of a discussion that should be held between board members at a valid meeting of the board and shouldn't take place in 'real time,"' explains Mary Ann Chandler, a partner at Katzman Garfinkel & Berger in Ft. Lauderdale, Fla. "Moreover, a board may not conduct a vote on an association matter via email."  Chandler warns that it's critical for board members and property managers to be conscious of the information they include in emails. " Em ails sent to a manager or to a board member's association email address become part of the association's official records," she explains, "and are subject to inspection by owners."  "We always urge our boards to not put anything in email that they wouldn't want blown up and shown to a judge or mediator three years down the road," says Donna DiMagg io Berger, managing partner at Katzman Garfinkel in Ft. Lauderdale, Fla.  What follows is a sample email policy spelling out guidelines for drafting emails.  **Sample Email Policy**  (courtesy of Donna DiMaggio Berger , managing partner, and Mary Ann Chandler, partner, at Katzman Garfinkel in Ft. Lauderdale, Fla.)  .--..\_   * h i s email policy covers emails that are written by the association's board members,   vendors, and agents.   * 1. We wa nt to keep the number of emails we send and receive to a minimum. We'd rat her meet in person.   2. We requi re board members to use an association em ail address that is separate from their personal or business email address .   3. We don't write emails that a reasonable person would consider offensive or disruptive.   4. If a board member, vendor, or agent writes an email that a reasonable person might consider offensive or disruptive, we let that board member, vendor, or agent know so that it won't happen again.   5. We meet in person whenever email is a poor way of communicating on a given subject.   6. We try to focus our efforts on problems, not personalities, and feel the same about what we write in em ails .   7. We don't forward emails containing private or sensitive information without the board's approval. | | | |
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1. **Always exhibit professional behavior.**

Treat your constituents-unit owners-with respect and decency. You'll be surprised at how many problems don't happen when there's open dialogue between the board and association members. Don't harass association members or residents, and refrain from defaming anyone in the comm unit y, including your manager and attorney.

1. **Maintain confidentiality of association matters when it's appropriate.**

For example, if your association is involved in lit igat ion with an owner, you should never discuss board act ions and decisions about the litigation outside board

meet ings - ever.

1. **Promptly disclose conflicts of interest, and take immediate action when one arises.**

Here's an example: Your board plans to vote on a landscaping contract. Your brother owns a landscaping company. It's best if your brother doesn't enter the competition. However, if he does, at a minimum, you should announce that your brother is one of the companies that will bid, and then you should leave the room and not take part in any discussion on the contract. Also insist that the board minutes note that you've recused yourself from the discussion and that portion of the meeting.

**Sources:**

Robert Galvin , a partner at Davis, Malm & D'Agostine PC in Boston who specia lizes in representing condos and co-ops; Luigi Rosabianca , the principal attorney at Rosabianca & Associates in New York City, who advises condo associations and co­ ops; Elizabeth White , a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va.; Marc A. Silverm an, an attorney at Frank, Weinberg & Black PL who advises associations.

takes to maintain the building, the landscaping, the facilities, and the roof.

1. **Remember your fiduciary duties.**

Recogn ize that board members operate in a fiduciary capac ity, which means you're entrusted with the operation of the association and doing what's in the association's best interest, not even in the interest of the owners. Here's an example: Your association wants to purchase one of its own units for an on-site manager to live in. If you become aware that there's a unit for sale at a very favorable price, yet you buy that unit yourself, you've breached your fiduciary duty to the association. Instead, you should have first told the association of the av ailab ility of that unit. If the association voted not to buy it for whatever reason, you'd be free to buy it.

Acting in the association's best interest also means mak ing decisions on the merits, not because you have an ax to grind or a personal agenda. Don' t solicit or accept gifts, gratuities, or favors, especially with those given with the intent of influencing a decision. Don't seek preferential treatment from board members, committees, contractors, or suppliers. Don't receive compensation for serving on the board. Don't advance a personal cause by using your position on the board to enhance your financial status through the use of particular cont ract ors or suppliers.

1. **Know the professionals you're dealing with.**

Be on a first-name basis with your manager, CPA, and attorney so that you feel comfortable calling for advice and support.

1. **Alw ay s comply with your governing documents and relevant laws.**
2. **Use competitive bidding.**

The easiest way to avoid the appearance of impropriety in association contracts is to

seek competitive bids for all projects over a certain amount, say $500.

1. **Work within the association's framework and refrain from unilateral action.**

Discuss board business only at board meetings, not at ad hoc meetings. And remember that the board speaks with one voice. If there's a board decision you disagree with, once it's made, support it.

* 1. **Pay your assessments, and pay them on time.**

When investing in an association, you become a member of a not-for-profit business that has fiscal obligations. Delinquen t revenue to the association directly affects the community's monthly operations and may limit the board in its attempt to maintain and enhance the community. All the benefits you get from your association-whether it's as basic as heat and lighting in your hallways to the beautiful grounds that surround your home- come to you because the association pays the money to provide them. If you and other homeowners don't pay assessments, service suffers and everybody loses.

* 1. **Don't try to benefit personally from your association.**

Here's an example: Your board plans to vote on a roofing cont ract . Your brother owns a roofing company. Make sure the board knows your bather's is one of the companies that will bid, and don't attempt to improperly influence the vote. And never accept something of value in exchange for recommending a vendor to your board.

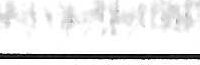
* 1. **Support your board of directors.**

This may sometimes be hard, and in some communities, an us versus them mentality can develop. But for a community to be successful, everyone needs a "we" mentality. Remember that board may make decisions that inconvenience a few homeowners, but t hey're made based on the long-term good of the entire community. If you disagree on an issue, more often than not, a friendly and polite face-to-face conversation with a board member will give both of you the opportunity to explain your side, which you may not have been able to do before because of the time constraints of a board meeting or because you weren 't able to attend prior meetings.

* 1. **Always be professional.**

Follow whatever communication protocols are set up. If you're supposed to contact your association manager when the gates malfunction, don't call board members at work instead. Or if you're having a run-of-the-mill dispute with a neighbor, don't ask the board or property manager to take sides. Treat your neighbors, the board, and association manager with respect and decency. Many problems don't happen when there's open dialogue within a community. Never make personal attacks on your board or fellow homeowne rs. Don't harass board members or other residents, and refrain from defaming anyone in the community, including your board and manager. Even when you disagree, there's no need to be disagreeable.

### Model Code of Conduct for Hollleo"'7ners



We've created a model code of conduct for HOA boards, but homeowners have responsibilities, too. We've asked our experts for their best advice on the conduct homeowners should always follow, along with conduct homeowners should avoid. Here's a list that you can distribute to all owners in your association.

1. **Be engaged.**

Start with the basics. Make sure your board and management company always have current contact information for you and your tenants if you're renting out your unit. Attend as many meetings as you can. Don't wait to be asked to participate in your community. Ask what you can do to help. And when you're asked-whether it's to vote, to respond to a request for information from your board, or to volunteer for a committee or the board-do it willingly. When homeowners aren't engaged, the burden of running your association falls on the shoulders of the few-and your associat ion fails to benefit from the wisdom of diverse voices and opinions.

1. **Read your governing documents.**

Boring as it may seem, you must read your CC&Rs, bylaws, rules, meeting minutes, and any other correspondence you receive from your board or association manager . Those documents form the framework that everyone in the association must live by and follow.

1. **Always comply with your governing documents.**

First concentrate on your own property to make sure it's attractive and well

maint ained . Then, even when you disagree with them, follow the rules. They're there so that *everyone* can enjoy the community. Following the rules also helps you build a case when you're frustrated with a neighbor's rule breaking and you ask the board to get your neighbor to comply. How can you expect the board to enforce rules against your neighbors if you're not following the rules yourself? If you're not sure whether something you'd like to do is permissible, ask a board member or your manager before you take action.

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**Pet Policy**

If your association allows pets-but with restrictions-you need a plan for dealing with scofflaws. And though you may love pets yourself, people have bought into your association in part because they liked the rules that governed owners' behavior. It's your job-and fiduciary duty-to enforce those rules. It doesn't matter whether the pets are friendly. If owners are violating the rules-and their neighbors' ability to live in peace has been diminished-you must put on your enforcement hat and do your job.

If owners aren't following your pet policy, either in person or through a letter, explain the problem and ask that it be corrected. Also document the discussion immediately afterward. Be specific in explaining the problem and the actions you need the owners to take, and don't start by threatening them with fines or other punitive action.

After you've let the owner know there have been complaints and asked for resolution, check in again to evaluate whether the problem has been corrected. If not, remind owners of the rules and the penalties for breaking them. Explain that if the problem isn't corrected within a certain time, you'll begin the association's process for dealing with noncompliant homeowners. Then take all the actions necessary to bring the owners into compliance.

Following is a sample pet policy to use as a guide in dealing with pet peeves at your association.

###### [ASSOCIATION NAME] PET POLICY

( courtesy of Nancy T. Polom is, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn.)

EFFECTIVE DATE: --------

The board of directors of [NAME] Association has adopted the following rules relating to pets:

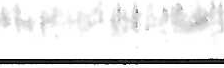
**Only "household pets" are allowed in the community.** "Household pets" includes a maximum of one (1) pet per unit, with the weight of such animal not to exceed twenty-five (25) pounds. In the event of a dispute as to the weight of a pet in a given unit, the unit owner shall provide written evidence from the pet's veterinarian of the pet's weight, which evidence shall be conclusive. All expenses related to the veterinarian's services shall be borne by the unit owner.

[INSERT IF COMMUNITY ALREADY OCCUPIED WHEN POLICY ADOPTED:

Notwithstanding the foregoing, any owner or occupant who, as of the effective date of

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1. **Extend common courtesy toward your neighbors.**



Little things can make everyone's life easier. Be considerate about things like noise levels and breaking down cardboard boxes for recycling. And don't do things that will impose a burden or expense on your community or other owners. For example, don't remodel your unit and throw away the debris in the community trash.

1. **Get to know everybody.**

Be on a first-name basis with your board mem bers, your manager, and your neighbors so that you feel comfortable calling to report problems, ask questions, and offer to help. Knowing what's going on with your neighbor is the first step toward knowing what's going on in your community. The more that people within the associat ion respect each other, the better the experience will be for everyone .

1. **Keep things in perspective.**

If your association doesn't already have one, help organize a party at least once a year. If necessary to save money, make it potluck. The idea is to get to know your neighbors and have fun so that you don't take association life too seriously.

**Sources:**

Tony Deblauwe, president of the 117-unit Mil lbrae Heights Homeowners Association in Millbrae, Calif.; Tanya Fair clough -Jam es, an associate at Weissman, Nowack, Curry & Wilco PC in Atlanta who specializes in representing community associations; Lisa A. Magill, a shareho lder and association attorney at Becker & Poliakoff PA in Fort Lauderdale, Fla.; Jim Taccone, Palm Beach regiona l director for The Continental Group Inc., a management company operating throughout Florida; Debra A. Warre n, principal at Cinnabar Consulting in San Rafael, Calif ., which provides training and employ ee development to community association management firms and training and strategic planning for association board members; Daniel Zimberoff, a shareholder ­ attorney at Barker Martin PS in Seattle, which exclusively represents community associations in both Oregon and Washington,

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the personal obligation of such unit owner in the same manner and with the same priority and effect as assessments under the declaration.

SANCTIONS AND REMEDIES

Each owner and occupant of a unit is governed by and must comply with the provisions of the declaration, the bylaws and the rules and regulations (collectively the "governing documents"), and such amendments thereto as may be made from time to time. A failure to comply entitles the association (and/or owners in certain stated instances) to the following relief:

* 1. Entitlement to Relief. The association may commence legal action to recover sums due, for damages, injunctive relief, lien foreclosure or any combination thereof, or any action for any other relief authorized by the governing documents or available at law or in equity. Relief may be sought by the association or, if appropriate, by an aggrieved owner, but in no case may any owner withhold any assessment due and payable to the association, or take (or omit) other action in violation of the governing documents, as a measure to enforce such owner's position, or for any other reason. These rights and remedies are in addition to any rights or remedies granted to the association in the governing documents or by law.
  2. Sanctions and Remedies. In addition to any other remedies or sanctions, express or implied, administration or legal, the association shall have the right, but not the obligation, to implement any one or more of the following actions against owners and occupants who violate (or whose families or guests violate) the provisions of the governing documents:
     1. Impose a monetary fine of Fifty and no/100 Dollars ($50.00) per month for each violation of the governing documents, and for the continuing violation thereof, other than delinquent assessment payments.
     2. Enter any unit, upon 24 hours' notice, and between the hours of 8:00

a.m. and 8:00 p.m., and remedy any condition which the owner or occupant has caused or allowed to exist in violation of the governing documents, and assess the cost thereof against the owner and the unit. Any such entry upon a unit pursuant to this section shall not be deemed a trespass.

* 1. Rights to Hearing. Pursuant to Section of the declaration, in the case of

imposition of any of the remedies authorized by Section 2, the board of directors must cause to be mailed or delivered to the owner against whom the remedy is sought to be imposed written notice specifying the general nature of the violation, the remedy to be imposed and the effective date of such imposition, which notice must be delivered at least ten days prior to such effective date.

this pet policy, owns a pet that exceeds the 25-pound weight limit may continue to allow such pet to continue to reside in the unit. However, if such animal dies or no longer resides in the unit, any animal that subsequently resides in the unit is subject to the provisions of this pet policy.]

No other animals such as livestock, rabbits, or poultry are allowed in any unit. Pets may not be kept or bred for commercial purposes. Special accommodations may be made by the board for therapy pets (pets whose presence aids their owner's management of or recovery from an illness, injury or disease, as determined by a physician licensed by the state of ).The board shall have the right to prohibit specific breeds of animals *(e.g.,* pit bulls) where the presence of such animals on association property has an adverse impact on any common expense of the association, including, but not limited to, expenses related to insurance.

ALL PETS MUST BE PROPERLY CONTROLLED IN ACCORDANCE WITH CITY OF

[NAME] LEASH LAWS. While outside the animal's unit, the pet must be leashed. Pets may not be left tethered indoors or outdoors unattended. Tethering or leashing of a pet to a tree, shrub, gas pipe, deck post or building structure is not allowed under any circumstances. Use of in-ground st akes , with the stake placed within two feet of the building, is permitted, provided the pet is not left unattended.

The owner of the pet is solely responsible for cleaning up pet droppings immediately. This includes both soiling in the common elements of [COMMUNITY NAME] and in any yards in the neighborhood or the street . Any damage to the landscaping or to the exterior of the building by a pet must be repaired at the pet owner's expense. Animal owners shall repair all animal damage to lawns, structures, trees and shrubs when requested to do so by the board . Repairs and replacements will use materials of equal quality to those damaged.

In the event the pet owner fails to do the repairs, the board shall have the right to hire a contractor to repair the damage, and the bill for same will be assessed to the pet owner. The board has the right to require such repairs be performed at any time of the year. The board will inform the pet owner of its desire to have such repairs it deems necessary done, and allow the pet owner ample time to complete them. Damage covered by this policy includes, but is not limited to, lawn burn-out from animal wastes, holes dug into lawns, damage from chewing or scratching on walls, shrubs, and trees.

No pet homes are permitted outside a unit or on the patio, deck or balcony of any unit. This includes doghouses and kennels.

The association reserves the right to assess a monthly surcharge of $10.00 per month to any unit in which an "outdoor" pet resides. ("Outdoor pets" are defined as those who regularly go outside, as opposed to "indoor pets," who typically do not spend any time outdoors.) Such surcharge shall assist the association in offsetting additional costs and expenses incurred by the association as a result of allowing pets in the [COMMUNITY NAME] community. Such surcharge shall be a lien against such unit and

**Resolution Regarding :Exe cutiv e Session**

How open your meetings must be-and what that actually means-is governed by your state law and your governing documents.

California's statute governing community associations, called the Davis-Stirling Act, directly addresses board meetings. "California requires the board to meet at an open meeting, defines what a meeting is, and requires that notice of the meeting go out to membership," explains Robert DeNichi!o , an attorney at Neuland & Whitney APC in Rancho Santa Margarita, Calif., who specializes in representing community associations. "It also has a time for executive session and what types of issues can be discussed in executive session. Those are litigation, contracts with nonowners, owner discipline-and the owner at issue is entitled to attend that portion of the meeting­ and personnel matters."

Florida has a similar open meeting requirement. "Every board and committee meeting needs to be open to the membership," says Bill Worrall, vice president of The Continental Group, which is based in Hollywood, Fla., and manages 1,300 condominium and homeowner associations totaling 310,000 residential units. "There's one exception, when the board is allowed to have a closed-door meeting with association counsel and exclude membership when the purpose of the meeting is regarding sensitive association litigation in progress. To my knowledge, that's the only time the board can do anything, if there's quorum present, without being open to the membership."

Texas has a bit of a hybrid open meeting law. "Homeowners are entitled to attend board meetings in condo associations, but not in homeowners associations," says David Regenbaum, founder, chairman, and CEO of Association Management Inc. in Houston, which manages 239 communities with about 62,000 units. "They're not entitled to participate-it's 'attend.' And they're not entitled to notice. They can ask when the next meeting is, but they're not entitled to notice."

"Most of our boards in Texas don't announce board meetings, but they also don't tell people they can't come," says Jenny Key, Austin, Texas-based vice president of RealManage, an association management firm that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "There are times the board does need to adjourn into executive session because some issues should be discussed privately. Other than those issues, I'd advise the board to discuss issues in open session and to have a record of their discussions in the minutes."

According to Regenbaum, executive session is proper in Texas for certain, specific topics. "It's matters involving personnel, pending litigation, contract negotiation, enforcement actions, invasion of privacy, and a catchall for whenever the board and the affected party agree to have executive session."

If your board needs to go into executive session, Regenbaum suggests you

politely ask members to leave the room. "Boards typically have executive session at the end of their regular meeting," he explains. What if owners refuse to leave? "On occasion, boards have left and gone to meet in one of the units. 11

"Boards should also keep executive session minutes because members have a right to certain documents, which doesn't include executive session minutes," adds



Said owner has the right, upon written request delivered to the board of directors within the foregoing ten-day period, to a hearing before the board of directors. The hearing will be set by the board at a reasonable time and place, with reasonable notice to the parties involved, but in no case later than 30 days after the request for a hearing, and with at least ten days' prior written notice to the offender.

The board of directors has established uniform and fair rules for the conduct of such hearing, including without limitation the right to interested parties to appear and be heard. If a hearing is requested, the remedy imposed will not take effect until the hearing is completed or the matter is otherwise resolved by mutual agreement of the board of directors and the persons against whom the remedy is sought, whichever event occurs first.

*If the person or persons against whom the remedy is sought do not appear at their duly notified hearing, the remedy imposed may be enforced forthwith.*

The decision of the board and the rules for the conduct of hearings established by the board shall be final and binding on all parties. The board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing. The rights bestowed upon owners by this Section 3 shall be the sole and exclusive remedy of such owners with respect to the matters covered by this rule, except as may be otherwise specifically authorized by the governing documents.

* 1. Costs of Proceeding and Attorneys' Fees . In any legal or administrative proceeding arising between the association and an owner or occupant because of an alleged default or violation of the governing documents by an owner or occupant, the association is entitled to recover all costs and reasonable at t orn eys' fees incurred by it .
  2. Liability for Owners' and Occupants' Acts. All owners are joint ly and severally liable for the expense of any maintenance, repair or replacement rendered necessary by their acts or omissions, or by those of the occupants of their Units, or their families or guests (including family pets or pets of guests), but only to the extent that such expense is not met by the proceeds of insurance car ried by the association or that of such owner or occupants; provided, however, that the association may assess the respons ible owner for any insurance deductible amount payable by the association and the amount of any increase in the association's insurance premiums resulting from the conduct in question.

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adopted pursuant thereto for which a member, his family members, tenants, guests, or other invitees are responsible

f. The personal liability of members of the association

1. The consideration of matters during executive session shall be restricted to only

those purposes specifi cally authorized pursuant to Section stated in the motion.

of the act and

1. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance identified in the open meeting.

Effective date: -------------

DeNichilo. "Executive session should be generally noted in the board's meeting minutes. It should include a description of what was discussed, but not in detail: 'The board went into executive session to discuss lit igat ion and personnel matters.' Then, in the executive session meeting minutes, it might state: 'The board discussed a settlement offer and accepted it,' or rejected it or made a counteroffer, whatever the outcome was."

Here's a sample resolution regarding executive session.

**Resolution Regarding Executive Session**

(courtesy of Elizabeth Whit e, a shareholder and head of the community associations practice at LeClairRyan in Williamsburg, Va.)

At its duly held meeting on , 20 , the board of directors of ,a

[insert state name] nonstock corporation (the "association") adopted the following resolution:

WHEREAS Section of the [insert state name and applicable statute] (the

"act") specifies certain instances in which a board of directors of a homeowners [or condominium] association may convene in closed, executive session; and

WHEREAS the board of directors recognizes that there will be the need, from time to time, to convene in closed, executive session in order to protect and serve the best interests of the association and its members; and

WHEREAS the board of directors desires to adopt procedures as to convening in executive session pursuant to Sect ion oftheacitnaccordance with the following procedures:

1. The board must vote in open meeting to assemble in executive session.
2. The motion shall state specifically the purpose for the executive session.
3. Reference to the motion and stated purpose for the executive session shall be included in the minutes.
4. Only the following matters may be discussed and considered in executive session
   1. Personnel matters
   2. Consult with legal counsel
   3. Contracts
   4. Pending or probable litigation
   5. Matters involving violations of the declarations or rules and regulations

Rules for Recording Meetings of the Association

(courtesy of Elizabeth Whit e, a shareholder and head of the community associations practice at LeClairRyan in Williamsburg, Va.)

1. The following rules shall apply to all open meetings provided for under the bylaws of the association, including, but not limited to, all meetings of the board of directors and its committees, and membership meetings (collectively, the

"meetings") .

1. Due to the heightened risk of unlawful and unauthorized use of individuals' images and/or likenesses, video-recording and/or other types of recording media that captures an individuals' physical likeness, and the taking of photographs, shall not be permitted at any meetings. Only audio-recording that complies with the association's rules is allowed.
2. Audio-recording by members of the association ("members") will be permitted at meetings, provided all of the following requirements are satisfied:
   1. Members who desire to conduct such audio recording must notify the association's director of operations in writing at least three (3) business days in advance of the meeting to ensure that the meeting facility is set up to accommodate such audio recording.
   2. Members who desire to conduct such audio recording must announce at the start of the meeting (prior to the initiation of such recording) and to all participants of the meeting that such recording will occur, which announcement shall be noted in the minutes of such meeting.
   3. Members who record all or part of a meeting shall, no later than one business day after the meeting, provide to the association's director of operations a complete, unedited, and decipherable copy of the recording capable of replay (" recording"), which copy shall become the property of the association. The copy of the recording shall be provided in one of the following format s:
      1. If the recording was made in a digital elect ronic format, the copy must be provided in (i) a playable-audio on a compact disc or a DVD or (ii) in .mp3 format on a compact disc, DVD, or USB storage device.
      2. If the recording was made on a cassette recorder, whether standard or reduced size (e.g., mini cassette or microcassette), the copy must be provided in (i) any of the formats provided for in 3)(c)(i) above,

or (ii) on a standard-size cassette tape.

Any compact discs, DVDs, USB storage devices, or cassette tapes (collectively, "storage mediums") provided to the association in accordance with the foregoing provision, and the member who made the recording waives any and all ownership rights in and to such storage mediums provided to the association.

* 1. Such recording equipment shall:
     1. Be (i) held by the member conducting such recording, (ii) placed immediately in front of such member, or (iii) placed in an unobtrusively location mutually agreeable to such member and all parties in attendance at the meeting;
     2. Not obstruct any person's view of the meeting participants or any exhibits or displays;
     3. Not emit any noise during the meeting;
     4. Not emit any obstructive light, including, but not limited to, flashing light;
     5. Not impede any person's movement, and
     6. Not create any dangerous condition, including, but not limited to, tripping hazards resulting from wires.

## Rules for Recording Meetings

In many states, if a member asks to audiotape or videotape your meetings, you can't say no. "In Illinois if homeowners want to record meetings, they should be allowed because of the Illinois open meetings act," explains says Sima L. Kirsch , a principal at the Law Office of Sima L. Kirsch P.C. in Chicago. The act promotes open meetings and disfavors secret deliberations and actions on matters that should be discussed in a public forum.

Florida also promotes openness at associations. "In Florida," says Bob. Tankel, principal at Robert L. Tanke! P.A. in Dunedin, Fla., "every owner has the right to audio or videotape any condo or homeowners' association meeting."

If your state requires your association to allow taping of meetings, your board can set reasonable rules governing the practice. "The board may make rules as to where the taping can take place," says Tankel. "It could pass a rule saying that the equipment has to be at least five feet from any person so the owner couldn't set up a camera in the president's face. That prevents the paparazzi problem." Kirsch suggests additional rules: "The taping of meetings has to be upon request and can't interfere with the meeting," she suggests, "and the tape can't be used for any other purpose than maintaining notes on the meeting."

If your association's secretary wants to tape meetings to later help in preparation of the minutes, ask that the tape be destroyed (unless your state prohibits it) after the minutes are approved. "Taping for a secretary to have accurate minutes is fine," says Kirsch. "But the secretary should then dispose of the tape . The association is a business, and that business may get into trouble. Anything it has in its records is evidence, so we direct boards not to keep those tapes." Also remind your secretary of the purpose of minutes. "Meeting minutes aren't transcriptions," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "So the secretary shouldn't need to go back to a tape."

Remember that taping can bring out the best and worst in people. "The presence of a camera may occasionally inflame people," says Tankel. "Or it may cause them to behave better."

The presence of a taping device may also stifle discussion. "Taping chills conversation," says Polomis. "A member might say, 'If you're recording, I'm not participating. I don't have anything to hide, but I don't choose to be recorded.' That undermines the purpose of meet ings, which is to have an open exchange."

With all this in mind, think hard about whether taping meetings is worth the effort. "Even if taping is legal, it's not usually very helpful," says Polomis. "I've rarely seen any tape-whether it's audio or video-that's been helpful because people aren't hooked up to microphones, and they tend to talk over each other. If you're taping because you think there's going to be a ruckus, hold your meeting at a public place and call the police. They'll come and shut the meeting down if there's a problem."

Here's a sample committee policy to provide guidance on taping meetings.

#### To-wing Policy

If your board has hired a towing company to patrol your parking lot and other roadways to tow away people who are breaking your parking rules, be sure to have clear rules in place so that if you tow owners' cars, you won't create endless disputes and ill will.

Your state may have laws dictating how you treat towing in your community association. Be sure to investigate before you implement any policy.

New Jersey and California are good examples. In New Jersey, the Predatory Towing Prevention Act governs tows within community associations. It requires that associations have a contract with a towing company and that signs be posted with detailed information, including when parking is permitted and when it's not and the fees that will be incurred for those who are towed.

California also regulates towing. "Community associations are required to comply with the California vehicle code," says Debra A. Warren , principal of Cinnabar Consulting in San Rafael, Calif., which provides training and employee development services to community association management firms and training and strategic planning sessions for association board members.

"They must have signs at every entrance stating that owners can't park in certain areas unless they're authorized to do so. The statute specifies the language that must be used. Then associations have to put a physical notice on the vehicle, and it can't be towed for 96 hours unless it's in a fire lane. We used to have to notify the vehicle owner before towing, but for privacy reasons, no longer in California can we search databases to attach a driver to a vehicle based only on a license plate.11

Don't forget to check with your local government, which can also regulate towing. "In some areas, what you can do varies by municipality," says Elizabeth

Whit e, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va.

"Associations run into all kinds of problems with things like deeded spaces, assigned spaces, and parking stickers," says Duane McPherson , the San Rafael, Calif.­ based division president at RealManage, an association management firm that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "It's best if you can find a towing company that keeps up with local and state laws that can assist and advise you."

Before you sign up with a towing company, be sure you need its services. "It's important for board members to really think through what you're trying to accomplish and how big of a problem you have," says Warren. "Often boards will enter into a towing agreement because there are one or two problems-they're not widespread­ and they create bigger problems by entering into these agreements. 11

When you do hire a towing company, you'll need to communicate your towing olicy to your owners and visitors. "I've seen both-associations that have good olicies, and association that don't," says McPherson . "You need to be absolutely

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certain whenever you're towing a vehicle that you're towing it legally. Nothing can be more problematic than the wrong car being towed or towing a car when it's in fact in the owner's space."

Warren agrees. "Make sure there's lot of written communication and posted signs so people understand the risk if they're going to violate the policy."

It's also smart to create checks and balances so that you don't tow cars improperly. That task can be complicated because of association rules that require boards to provide owners due process before taking corrective action. "In some associations, you have to go through due process before taking any action," says White, "and the process for towing doesn't always fit neatly with giving owners 14 days' notice under due process rules."

Warren advises you require that your towing company get permission before towing any car. "If your vehicle code doesn't require a person of authority to sign for the tow," says Warren, "there should be some double-check with the towing company so it doesn't have the ability to drive through your grounds and tow without some second level of authorization."

McPherson agrees . "Have the tow company check with the onsite manager before any car is towed," he advises. "Don't just turn over that responsibility because the one who's ultimately responsible is the association. Owners will come right back at you, not the towing company."

With those tips in mind, here's a sample towing policy.