

HFVOA Rules and Regulations

Compliance Enforcement

Topics:

Violations, Investigations, ARC/Board Actions
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Introduction

The HFVOA Board of Directors and the Architectural Review Committee (ARC) have as their goal to have compliance with the governing documents achieved through education and gentle reminders rather than to fine an owner. It is important for the community as a whole to have proper expectations that community aesthetic and performance standards are consistently met.

In cases where an owner is aware but does not act in compliance, then the ARC will step in to follow pre-set procedures. These are cited below.

Authority for the ARC's role stems from its Architectural Review Committee's responsibilities cited in ORS 94 and in the HFVOA's governing documents. More specifically, CC&R Article 6.2 states that no material changes, improvements or maintenance to the exterior of dwellings or landscaped area may be commenced, erected, placed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC.

Chapter 1: Violations, Investigation, ARC/Board Actions

A. ARC Discretion (CC&R Article 6.8 and 6.9)

The ARC, in its sole discretion, may withhold consent to any proposed work if the ARC finds that the proposed work violates the provisions of the Declaration, would be inappropriate for the particular Lot, or incompatible with the design standards that the ARC intends for the Property, as long as the ARC complies with ORS 94.762 (or other provisions of ORS Chapter 94) regarding electric vehicle charging stations. The ARC may

consider siting, shape, size, color, design, height, solar access, or other effects on the enjoyment of other Lots or the Common Maintenance Area, and any other factors that it reasonably believes to be relevant in determining whether to consent to any proposed work.

In the CC&R Article 6.9 Nonwaiver, the consent by the ARC to any matter proposed to it or within its jurisdiction will not constitute precedent or waiver impairing its right to withhold approval of any similar matter thereafter proposed or submitted to it for consent.

B. ARC Process to Correct Non-Compliance

Step 1 - NOTICE OF VIOLATION

1. Once a possible violation has been reported or otherwise becomes known to the Association, it will be investigated and a determination made as to whether a violation has actually occurred.
2. If a non-compliance violation is determined, the ARC will send or deliver to the offending Owner a written notice of the violation (Notice of Non-Compliance) explaining the violation(s) and giving the Owner a reasonable period of time within which to correct the violation and comply.
 - Side note: per the HFVOA Bylaws, Article 6.4, each Owner is responsible to keep the Association informed of their current mailing address.
3. If the violation involves an emergency timeline or conspicuously dangerous circumstances, the notice may then require the Owner to cease action immediately or to promptly take certain actions in order to comply.
4. Right to be Heard - detailed in Chapter 2 below
Each Owner who has received a Notice of Non-Compliance may submit a request to the Board to have an appeal hearing.
 - The request must be sent within 14 days of the Notice of Non-Compliance. Thereafter within 14 days of receiving the written request for an appeal hearing, the HFVOA Board of Directors will notify the Owner of the date, time, and location for the appeal hearing.
 - The Association's Board has the authority to agree or disagree in whole or in part to the opinion of the ARC that a violation has occurred.
 - If the Board determines that a violation has occurred, then the Board (through a formal vote) has the authority to assess the proposed

monetary fine (per the published Fine Schedule), modify it, or waive it based upon the circumstances of the situation.

Step 2 - SECOND NOTICE: FAILURE TO COMPLY

Depending upon the violation, if **15 to 30 days** have passed since the initial Notice was sent, and the Owner has neither made corrections nor submitted a Request for Appeal Hearing in the specified time period, then a second letter (Failure to Comply) will be mailed to the Owner. This letter will repeat an explanation of the violation, state that the Owner has now been assessed a fine, and that the HFVOA has the option to hire professionals to come perfect compliance. The cost of the professionals will be assessed to the Owner.

Step 3 - THIRD NOTICE: FAILURE TO COMPLY

If--after an additional **30 days** of non-compliance--the owner has not acted to correct the violation, the Association will send a third written notice explaining that the Association will have the option to move immediately to further remedies including assessing the Owner further fines (per the published Fine Schedule). Refer to ORS 94.777.

FURTHER COMPLIANCE ACTION

Notwithstanding anything to the contrary in these Rules and Regulations, the Association shall--in all cases of a violation regarding exterior maintenance--have the right to exercise the Exterior Maintenance provisions in Article 4.17 of the CC&R's. Additional fines, HFVOA and legal expenses may continue to accrue and be assessed against the violating owner while the Association is acting to achieve correction of the violation.

LEGAL ACTION

At the Board's discretion, legal action may be taken against the violating Owner at any time after the deadline correction period. (ORS 94.777). If the Owner continues to violate the requirements of the CC&R's or these Rules and Regulations, additional fines, penalties, and interest will continue to be accrued during the legal action process. (CC&Rs Articles 8.9, 9.2 and 9.3)

C. Key Situations of Non-Compliance

- 1. "Stop Work Orders"** - Failure of an Owner to obtain written approval for any project covered by the Architectural Review Committee (ARC) Rules and Regulations prior to "said project" is an infraction of these rules and may result in the Owner having to restore "said project" to the original condition. Additionally, fines may be assessed.

2. Right of Maintenance and Entry

- a. Consistent with CC&R Article 4.17, if an Owner fails to perform maintenance or repairs to the exterior or landscape improvements that the Owner is obligated to perform under this Declaration, and if the Board determines, after notice, that the maintenance, repair, or both is necessary to preserve the attractiveness, quality, nature, or value of the Property, the Board may cause the maintenance or repair to be performed and may enter any Lot whenever entry is necessary in connection with the performance thereof. Under no circumstances may the Association or its agents enter an Owner's dwelling.
- b. Per CC&R Article 4.17.1 **Costs**, the costs of such maintenance, repair, or both are chargeable to the Owner of the Lot as an Assessment, which may be collected and enforced as any other assessments authorized hereunder.

Chapter 2 Appeal Process and Opportunity to be Heard

In accordance with CC&R Article 6.10 Appeal, any Owner adversely impacted by the ARC action may appeal the action to the HFVOA Board of Directors. This process is outlined below.

Note: per CC&R 6.11 Liability, neither the ARC nor any member thereof will be liable to any Owner or Occupant for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, as long as the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

The Oregon Planned Community Act (ORS 94) grants the Owner the right to appeal any dispute with the Association.

A. Submitting a Request for an Appeal Hearing

The Owner must put a request to appeal in writing then send this to the HFVOA postal mailing address. This must be postmarked within fourteen (14) days of the Notice of Non-Compliance. After the Board receives the hearing request, they will act within fourteen (14) days, to send written notification to the Owner stating the date, time and place of the appeal hearing.

- The Owner's failure to request an appeal hearing within 14 days after the Notice of Non-Compliance shall be deemed as the Owner's waiver to The Appeals Process.

The purpose of such a hearing is to permit the Owner to provide information to the Board to prove why there is no violation or that there are extenuating circumstances calling for a different level of decision.

The appeal request must contain the following:

- ✓ Owner's name (s) and address --both Lot number and mailing address;
- ✓ Owner's reason and basis for an appeal;
- ✓ A copy of all supporting documentation;
- ✓ The name of any attending witnesses or other collaborating guests;
- ✓ The Owner shall sign and date the Request for an Appeal Hearing.

B. Hearing Request Procedure

1. The appealing Owner shall be sent confirmation receipt of a Request for Appeal from the Association.
2. The Board President will assemble at least two current members of the Association's Board of Directors to act as a Review Board (the "Review Board") following receipt of a written Request for Appeal complying with the requirements set forth above.
3. Upon formation of the Review Board (normally within 14 business days), the Review Board shall mail or deliver notice to the appellant Owner of a hearing date, which will provide the date, time, and location of the hearing, to be determined by the Review Board.
4. The Review Board will permit the appealing Owner up to thirty (30) minutes to explain the circumstances of the appeal and provide grounds as to why the violation and/or fine should be waived, reduced or withdrawn.
5. At the conclusion of the presentation, the Review Board will adjourn into closed session to review the circumstances of the Request of Appeal as presented.
6. Within a reasonable time frame (normally within 14 business days) of the hearing for the Request for Appeal, the Review Board will mail or deliver written notice to the Owner as to the Review Board's decision.
7. If the Review Board finds in favor of the appealing Owner, it shall advise the Owner as to whether the violation and/or the fines originally imposed are

reduced, modified, or waived. Any adjustment(s) shall reflect on the Owner's account the following month.

8. If the Review Board determines that the Owner's explanation or defense presented at the hearing was inadequate or otherwise failed to justify a reduction, modification, or waiver of the violation and/or fines, the Owner will be so notified, in which case the fines imposed will continue to be owing to the Association until paid in full regardless of whether the violation has since been removed or corrected.

Chapter 3 Fines for Non-Compliance

Consistent with CC&R Article 8 and Bylaws Article 6, Owners are obligated to pay all assessments, fines, penalties, interest fees, late fees and any additional charges levied under the Articles of the HFVOA Declaration, the Bylaws, Architectural Standards, and the Rules and Regulations adopted by the Board or the ARC.

No fines can be levied until a Fine Schedule has been mailed to the Owner's mailing address. Once done--in accordance with the ORS 94.630 (1) (n) and the HFVOA Bylaws Article 7.3 and 8.9--the Association has the authority to levy a fine:

- 1) If an Owner is not in compliance with the Association's governing documents,
 - 2) Has been warned with a written notice, and
 - 3) Has had an opportunity to be heard or has not requested an appeal hearing.
- (Bylaws Article 8.9.5)

The Non-Compliance Fine Schedule is presented in the Exhibits.

Chapter 4 Chronic Offenders

When the acts or omissions of an Owner, which violate governing documents' requirements or restrictions, including those within this Compliance Enforcement Rule and Regulation, repeatedly and continually occur over periods of time despite past notice or letters of the Association informing Owner that such actions or omissions are violations, such as Owner is deemed a "Chronic Offender."

A. Policy

The Board considers it reasonably necessary to address the Chronic Offender situation as a result of the extra Association time, monies (including attorney fees), materials,

monitoring and corrective effort being spent or done, than on Owners who are single, isolated, or rare offenders. Further, the Chronic Offender has a much greater adverse impact on the attractiveness, value and marketability of homes in the community and on the quality of life of other Owners.

Accordingly, the Board of Directors has adopted this particular Rule as well as those in other Rules or Policies related to the topic of non-compliance or violations, in the hope that such a policy will deter owners from becoming or continuing to be Chronic Offenders and to help recover the additional costs incurred from the excessive time, effort, and monies expended by the Association (with funds collected from all members) in dealing with such Owners.

B. Standards of Conduction - Violations

The following standards of conduct/violations will assist the Board in determining whether an owner should be classified as a Chronic Offender, but are not the sole factors that the Board may or are required to consider when making a determination whether an owner is a Chronic Offender.

1. Criteria:

Owners who continue to violate the same or similar governing document issues more than 3 times in a continuous one-year period will be classified as Chronic Offenders.

2. Board Policy:

It is reasonable to impose enhanced fines or penalties upon Chronic Offenders.

3. Board Action:

If the Board or any Committee designated by it, to monitor and address this topic determines that an owner is a Chronic Offender regarding one or more issues or violations of the governing documents, the Board will issue a notice to owner at his or her last known address that Owner is now considered a Chronic Offender and to cease and desist the violation(s) then at issue. The Notice will include reference to the Owner's right to request a hearing on the determination he/she is a Chronic Offender and the deadline by which he must request such a hearing in writing or his right will be deemed waived. After such notice is sent to Owner, if the Owner does not stop or correct the violation(s) involved, enhanced fines may be imposed pursuant to those listed in the Non-Compliance Fine Schedule.

C. Fines and Remedies

Chronic Offenders--at such time as an Owner is determined to be a Chronic Offender--the following enhanced fines are applicable to and may be imposed against such Owner.

- ✓ The Owner will be subject to double the fine structure set in the Compliance Enforcement Rules and Regulations.

If the Owner has not corrected the problem(s) within the specified time, the Association has the right to hire a professional to go to the property and bring the property into compliance at the Owner's expense.

If the Owner has not received any violations pursuant to this standard of conduct/violations for one year, then the Owner will no longer be subject to the enhanced fine schedule.

Exhibits

1. Graphic: Steps to Promoting Compliance
2. Non-Compliance Fine Schedule