



## Enforcement Tips and Traps

### 1. General Principles

- a. Fairness
- b. Uniformity
- c. Consistency
- d. Notice

### 2. Enforcement Process

- a. Homeowners Associations and Condominium Associations have the authority to fine after “notice and an opportunity to be heard”
- b. It is important to have an enforcement resolution and schedule of fines or procedure in place **before** the violation occurs. Resolution may cover:
  - i. Who can report the violation?
  - ii. What are the rules for a violation hearing?
  - iii. Is there an appeal process?
- c. What does the violation notice contain?
  - i. Rule the was violated (and how)
  - ii. Abatement Period (or date after which fines will commence)
  - iii. Date(s) of Violation
  - iv. Amount of Fine
  - v. Opportunity to request a hearing
  - vi. Fines must be levied pursuant to a schedule or resolution.
    1. ORS 94.630(1)(n), ORS 100.405(4)(k)
- d. Rules Hearings
  - i. Rules Hearings must occur in an open meeting
  - ii. Allow parties to call witnesses, and present evidence (within reason)
  - iii. Render a final decision (but always necessarily at same meeting)
  - iv. Reasonable time limitations on presentations

- e. Fines must be “reasonable”
  - i. Proportionality is key.
- f. Jiffy Lube Rule – don’t sit on your rights! If an Association allows fines to accumulate indefinitely the Court is less likely to rule in its favor.
  - i. Six months or \$5,000.00 is a good rule of thumb.

### **3. Remedies Available for violations of the Governing Documents**

- a. Neighborly Resolutions
- b. Fines
- c. Placement and foreclosure of lien
- d. Termination of utility services
- e. Self Help
- f. Court Action (Legal Relief)
  - i. Injunctive Relief
  - ii. Specific Performance
  - iii. Money Damages

### **4. Enforcement Pitfalls**

- a. Fair Housing Act / Americans with Disabilities Act
  - i. FHA prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status
  - ii. This applies to religious displays – crèche, Christmas lights
- b. Soldiers and Sailors Civil Relief Act
  - i. Restrictions on enforcement, collections, interest against active duty military personnel
- c. Freedom to Display the American Flag (FLAG) Act
  - i. May not prevent flag display on property in which owner has a separate ownership interest or right to exclusive use
  - ii. May impose reasonable restrictions of time, place, and manner to protect substantial interest of association