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# **Community Association Legal Webinar – 2025**

## **May 19, 2025 Session - Topics:**

**Internal Enforcement: Compliance and  
Sanctions**

**Handling Delinquent Assessments Before  
Turnover to Legal**



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# **Introductions & Welcome**

**Brendan Bunn, Esq.**

# **Legal Disclaimer**

This information is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each case and each association's governing documents.

Every effort has been made to ensure this information is up-to-date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.



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# **Internal Enforcement: Compliance and Sanctions**

**Presented by Michael Sottolano, Esq.**

# Why Enforce Covenants and Rules?

*Fragile as reason is and limited as law is as the institutionalized medium of reason, that's all we have standing between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling.*

- ***Felix Frankfurter***

*(U.S. Supreme Court 1939 – 1962)*

# Know your authority...

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## Important Statutes

### VA Property Owners Association Act

- 55.1-1800 *et seq.* VA Code

### VA Condominium Act

- 55.1-1900 *et seq.* VA Code

### DC Condo Act

- 42-19010.01 *et seq.* DC Code

## Covenants & Rules

- Declaration (Restrictions, CC&Rs, etc.)
- Condo Instruments (incl Bylaws)
- Rules & Regulations (Board adopted)

# What is your authority...

What is this violating?

- Declaration/Covenants
- Condominium Instruments
- Rules
- Not Approved by Arch Comm
- In Conflict w/ Design Guidelines
- Annoyance/Nuisance
- Danger to Person/Property

*STAY IN YOUR  
LANE!*

# Complaint & Due Process Policy

1. Adopted by Board of Directors
2. Internal Procedures for Investigation and Enforcement
3. Ensure Consistent, Uniform Application and Due Process
4. Check Gov. Docs & State Law for Available Remedies & Required Procedures

# What is “Due Process”?

Steps Required by Condominium Act (Section 55.1-1959) or POA Act (Section 55.1-1819) before:

- Assessing rules violation charges; or
- Suspending rights to use facilities/services for nonpayment of assessments

Due Process equals:

- **Notice** of the violation
- Reasonable **opportunity to correct** the violation
- **Opportunity to be heard** (and represented by counsel) before Board or other tribunal

**PLUS – anything else required by governing docs**

# Providing Notice of Violation

Give a reasonable “opportunity to correct” the violation

Send to **correct party and address** (where they receive meeting notices)

Also cite potential penalties (\$50 per violation or \$10 per day for 90 days; suspension of privileges)

Also cite provision being violated

*(If Assn suspends rights for nonpayment of assessments, state this in delinquency notice)*

# Providing Notice of Hearing

*Side question* -- is a hearing required?

- Statutes refer to “opportunity to be heard”
- But check documents – hearing may be prerequisite

Legal Requirements:

- Hand-delivered or mailed by **registered/certified mail**
- **Fourteen** days in advance
- State the **actions** that may be taken if violation found
  - Add: Citation to provision being violated
  - Add: “You may be represented by counsel”

# Conducting the Hearing

Little guidance in law regarding hearing itself

- The key: allow owner (or their counsel) to present arguments and evidence (witnesses/documents) to tribunal
- Allow enough time in light of violation

Va. Legal Requirements:

- 14 days advance notice
- Quorum at hearing and meeting where penalty determined
- Hearing results letter – send within seven days of hearing
  - Send by **hand delivery** or certified/registered mail

# Penalties & Remedies

## Violation Charges (Va.):

- \$50 per violation; or
- \$10 per day for continuing violations (up to 90 days)

## Suspension of rights:

- May suspend *“right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to lot/unit is not precluded and provided that such suspension shall not endanger the health, safety or property of any owner”*
- Pool, gym, club room
- Parking?
- Which utilities?
- Voting?

## Self Help?

# What's Next if Remains Noncompliant...

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Lawsuit seeking injunctive relief

## What is an Injunction?

An injunction is a court order that either:

- Compels a person to do something

OR

- Restrains a person from doing something

# What's Next if Remains Noncompliant...

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Follow (and document) your association's enforcement procedures:

- Due Process
- Notice of Violation / Opportunity to Cure
- Hearing before the Board
- Sanctions (e.g., violation charges, suspension of rights)

Gather evidence (e.g., photographs, witness statements, notices of violation, notice of sanctions imposed, etc.)

Work with counsel to prepare Complaint for Injunctive Relief, Exhibits, Claim Affidavit (include request for costs/atty fees)

File Complaint with Court and Serve on Defendant(s)

# What's Next if Remains Noncompliant...

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## Obtaining an Order for Injunctive Relief.

Order entered either after trial or upon finding sufficient evidence with Defendant(s) in default.

Right to Appeal

Enforcing the Order

- Order authorizing self-help
- Local law enforcement
- Motion to Compel Compliance

# Tips for Effective Enforcement

*Stay on course, enforce with force—but not remorse!*

- Adopt Complaint & Due Process Policy/Procedures
- Offer Hearing/Opportunity to be Heard
- Remain Objective, Professional & Respectful
- Be Consistent & Reasonable (Not Arbitrary or Capricious)
- Note Violations in Resale Certificates
- Avoid Common Pitfalls
  - Statute of Limitations/Laches
  - Arbitrary/Selective Enforcement
  - Ambiguous or Unreasonable
  - Procedural Concerns: Lack of Notice, Inadequate Due Process
  - Evidentiary Concerns: Lack of Proof/Witnesses/Records



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# **Handling Delinquent Assessments Before Turnover to Legal**

**Presented by Lindsey Davis**

# Effect of Delinquencies

- Budget Deficiencies
- Reduction in community-supplied services
- Additional burden to paying members
  - Higher fees
  - Special assessment
- General negative impact on property values and community as a whole

# Gathering Information and Keeping up with Deadlines

- Information Checklist
  - Check copies and employment info for garnishments
  - Renter names and leases
  - Offsite addresses
- Timing – be aware of deadlines
- Collections Policy

# Good Communication and Record Keeping

- Delinquency notices
- Final demand letter with warning of legal consequences
- Document everything!

# Administrative Collections Remedies

- **Suspension of right to use facilities and services (parking, pool passes, etc.)**
  - VA: Minimum statutory requirements
    - Notice
    - Reasonable opportunity to correct
    - Opportunity for a hearing
  - Check your governing documents!
    - Va. POA declaration should have express authority or broad rule-making authority to adopt suspension authority
    - Va. Condo – look for authority in condo instruments or board-adopted rules

# Administrative Collections Remedies

- **Suspensions of voting rights/right to serve on the Board**
  - VA: based on documents;  
DC: if more than 30 days' delinquent, not entitled to attend meeting; see documents re: right to serve and suspending voting
- **Resale Certificate** – disclose account balance, so will be paid at closing

# Leniency vs. Lunacy

## Responding to Owners' Request for Forbearance

### Reasonable

- Payment plans
- Waiver of late fees, interest, etc.
- Suspensions

### Excessive and Unauthorized

- No authority to exempt from assessments
- Obligation to collect to fund operations
- Remember deadlines for recording liens and filing suits!

# Leniency

## Late Fees/Waivers

- Fair
- Reasonable
- Consistent

## Payment Plans

- In writing
- Specific as to terms

## Internal Remedies

- Consider holding off sending to legal to see if suspensions or payment plans resolve

# Final Thoughts

- Keep **good records** of prior notices and owner information
- Be aware of **statutory deadlines** and when to turn over to legal counsel
- Remember the **balancing act** of fiduciary duty to the Association and reasonable leniency for extenuating circumstances

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**ANY QUESTIONS?**

**. . . Time for breakout sessions**