



# Guide to NC Covenant Enforcement & Adjudicatory Hearings



*Guide to NC Covenant Enforcement & Adjudicatory Hearings is provided by Association Management Group as a community service and resource to its member communities. Other titles in the series include: A Guide to Parliamentary Procedure, A Guide to a Safer Home, Guidance for Financial Management, A Guide to Collecting HOA Fees, Minute Taking Made Easy, and Selecting an Association Management Company. For a copy, please contact your account representative or visit [www.AMGWorld.com](http://www.AMGWorld.com).*



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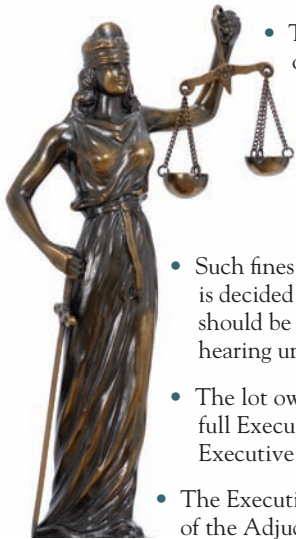
Volunteer boards of condominium and homeowners' associations often perform a number of functions vital to the successful governing of the association: fostering community harmony, maintaining common areas, and establishing and enforcing rules.

The opportunity for appreciation of home prices within a community is largely based on community appeal. When a community is established, a certain set of standards, usually found in the Covenants (which may be amended over the years) is established. Two main jobs of the Board of Directors are to perform functions related to enforcing the Covenants and ensuring that the community vision is consistently implemented.

For most associations in North Carolina, the law prescribes the following procedures for enforcement of restrictions and for fines and suspension of planned community privileges or services:

Unless a specific procedure for the imposition of fines, or suspension of planned community privileges or services, is provided for in the declaration, a hearing shall be held before the Executive Board, or an Adjudicatory Panel appointed by the Executive Board, to determine if any lot owner should be fined or if planned community privileges or services should be suspended, pursuant to the powers granted to the association in North Carolina General Statutes 47C and 47F.

- Any Adjudicatory Panel appointed by the Executive Board shall be composed of members of the association who are not officers of the association or members of the Executive Board. Alternatively, the Executive Board may serve as the panel.
- The lot owner shall be given notice of the fine, allowed the opportunity to be heard and present evidence, and will be notified of the final decision.
- If it is decided that a fine should be imposed, a fine not to exceed \$100.00 may be imposed for the violation and without further Hearing, for each day more than five days after the decision that the violation occurs.
- Such fines shall be assessments secured by liens under G.S. 47F 3 116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is corrected.
- The lot owner may appeal the decision of an Adjudicatory Panel to the full Executive Board by delivering written notice of an appeal to the Executive Board within 15 days after the date of the decision.
- The Executive Board may affirm, vacate, or modify the prior decision of the Adjudicatory Panel.



*Note: North Carolina General Statute refers to "Executive Board"; in this context, it has the same meaning as the HOA Board of Directors.*

**RECOMMENDED PROCESS FOR FINING, SUSPENSION OF COMMUNITY PRIVILEGES OR SERVICES**

When fining an owner, the association must be very careful to treat the alleged offender fairly and to document all actions undertaken by the Association. It is recommended to err on the side of caution rather than be too harsh, and to give reasonable time at all junctures to allow the alleged offender to participate, be represented by counsel and to have a reasonable period of time to fix the alleged violation.

The Executive Board, Officers and Manager of the Association should, at an early stage, contemplate if it is appropriate to discuss the matter with legal counsel. Often, simple early guidance can help avoid pitfalls that can be complex and costly later. Some of the issues that merit special consideration are multiple violators with similar offenses, possible claims of discrimination (disabilities etc.), unusual or particularly significant violations and owners known to be combative or litigious.

Reasonable fines, and suspension of common area privileges or services are enforceable under North Carolina law if the procedure outlined in the statutes or the Association legal documents are followed. The process can be long and expensive. In the event the case ends up in court, assume the court will be predisposed to side with the violator and not the Association. Even if the court awards monetary damages to the Association, all or part of the attorney fees may be non-recoverable.

It is very important to remember that the goal is to gain compliance, not to collect money.

A high percentage of cases indicate that the process described below achieves compliance prior to the Association being forced to file a lien to collect fines. However, in each case, procedures must be carefully followed and records must be maintained in the event they are needed to support the Association's actions.



The following steps outline the process recommended for remedying most violations. However, special circumstances may dictate a modified approach:

1. Determine what Covenants, Bylaws, Rules, or Laws the alleged actions have violated. If the alleged infraction is a violation of the “law,” report the matter to law enforcement officers. The police, SBI, FBI, Building Inspections Department, Department of Health, Animal Control, and Department of Transportation are some of the law enforcement sources that can be utilized effectively and free of charge.

**TIP:** If a matter results in court proceedings, HOA are often treated favorably if they can demonstrate that the alleged violator has been treated with an abundance of fairness.

2. If the alleged transgression violates the Association’s Covenants, Bylaws or Rules, it must first be determined (generally through legal counsel) if the provision is enforceable under prevailing Statutes and case law. Since there are new court rulings almost daily, this needs to be checked often. Obtaining early guidance will save cost and aggravation later.



3. Obtain photographic and/or written evidence of the alleged violation. Examples of written evidence include affidavits sworn by committee members, board members, or in some cases, neighbors. Photographs that are date and time stamped are best, and may be accompanied by affidavits attesting as to the identity of the photographer, date and time observed, and any other pertinent information. Multiple photographs and/or affidavits from different days are best to document the case.

4. Send a courteous warning letter to the offending homeowner. The letter must identify the violation(s) and remedial action required. It should also state in detail what is being violated (for example, section 3.A. (1) of the Associations Declaration of Restrictive Covenants recorded in Book 1245, Page 465). Include copies of the photographic evidence.

5. Send a follow-up letter, allowing additional time.

6. Send a third and final letter. State that two warning letters were sent, which have been ignored. This letter informs the homeowner that an Adjudicatory Hearing will be held and that a fine may be imposed, pursuant to statute. Inform them of the time and place of the Hearing, and that they have the right to bring an attorney to the meeting. Be reasonable, and allow adequate time between the letter and the Hearing date, minimum of 10 days. This final letter should be sent certified mail, FedEx, or by some other method where the Association can prove the homeowner received notice. The letter should ask them to call and confirm if they will attend. This often allows multiple Hearings to be scheduled in a single time block. The telephone call is also an opportunity to discuss resolution and to plan if the Association’s legal counsel should attend.

**TIP:** AMG and associations find they get greater compliance if their attorney sends the hearing invitation and/or follow-up letters. They strongly recommend this strategy.

7. The following steps assume the violation remains uncorrected and that no fining provision or restriction exists in the Declaration. The Hearing is to be held before an Adjudicatory Panel appointed by the Board, or in front of the Executive Board. Be sure you have arranged a suitable location. Conducting a Hearing in someone’s home is not recommended.

*Note: If your Association decides to appoint an Adjudicatory Panel (which we recommend), by law it cannot include Directors or Officers.*

8. The Board may hear the case itself if no Adjudicatory Panel is appointed. Either way, the evidence must be examined and the body hearing such must act impartially. If an Adjudicatory Panel or Board member has any predisposition or is personally involved in the case, he or she must recuse themselves from the Hearing and deliberations.

9. Generally the Hearing opens with the Chair or Manager explaining the process, including that no decision will be announced at the Hearing, and that the decision will be provided to the owner in writing. Then the evidence with the alleged violator is presented in a factual manner. (i.e. ...here is what we have received, been informed or think we have observed; we are interested to hear your point of view...) The alleged violator may then respond.

10. It is recommended that the Panel or Board not engage in debate, but to listen to what the owner says. The homeowner may bring their attorney. If this happens, it is recommended that the Hearing be continued until the Association can also be represented by counsel. The goal of the Hearing is to resolve the violation, not to punish individuals.

11. After he or she has presented his or her case, the homeowner should be thanked for attending and then excused from the Hearing.

**TIP:** Consider the \$100 per day fine as the equivalent to the “death penalty” in magnitude of severity. Often smaller fines are just as effective; \$15 per day for 30 days is \$450 and is more likely to be enforceable.

12. After the homeowner leaves, it will be determined if privileges should be revoked or a fine levied and if so, what is the appropriate amount of the fine. One fine (maximum \$100) may be levied at this juncture by state law.



13. Additional fines (maximum of \$100 per day) may be imposed a minimum of five days after the Hearing, if the violation is not abated. It is recommended that more than five days be provided to allow the owner time to receive the decision, and to have an opportunity to abate the violation. In most cases, allowing 10 days, plus a few days mailing time, is sufficient. Some Associations impose escalating fines, with the amount increasing (or the frequency decreasing, e.g. from weekly to daily) as more time passes.

14. The fine should be in line with the nature of the offending activity. Use common sense and any guidelines adopted by the Board when determining the amount of the charges. It is suggested that the maximum be avoided. Use the smallest amount of fines possible and remember even \$10 per day for a month is \$300. It is our opinion that Courts will punish Associations who impose excessive fines, or are in any way unreasonable in their dealings with the owner. We recommend that any fines be reasonable and proportional to the violation.

15. The homeowner should be notified in writing of the Board’s decision and the date upon which any fines will commence. We recommend that this notice come from the Association’s Law Firm. It is recommended that this letter outline all the details of the violation, the appeal process and possible consequence of non-payment. Generally, we suggest that envisioned fines be waived in the event reasonable compliance is achieved.

16. If the violation is not remedied, start fining. Be sure that the fine is accounted for on the homeowners’ ledger and that the owner receives a regular (at least monthly) invoice for the fine(s).

17. No later than 30 days after the fines begin, the Association’s attorney should again write the owner advising them that under North Carolina law, the fine is an assessment and that a lien will be filed against the homeowner’s property to secure payment of the fine once the amounts due become past due.

**TIP:** Remember the goal is to enforce the rule or Covenant and gain compliance. Generally, HOAs view waiving the fine in exchange for compliance as a good result.

18. The association’s, with the help of an attorney, can ultimately foreclose; however, unless regular assessments are also owed, foreclosure solely for fines must occur pursuant to judicial foreclosure procedures, not power of sale foreclosure as is the case with the collection of assessments. Judicial foreclosure takes considerably longer to effect, is much more costly and has the potential for the judge to rule against the Association. For these reasons, judicial foreclosure should be undertaken only as a last resort.



NC Guide to Covenant Enforcement & Adjudicatory Hearings is the one in a series of HOA Guidance booklets prepared by Association Management Group (AMG) for clients of the firm and friends. It is intended to provide general information and does not constitute legal, accounting, tax or insurance advice. Specific questions should be directed to your association lawyer, accountant or insurance professional.

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